**BEFORE THE**

**ILLINOIS COMMERCE COMMISSION**

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| AT&T Communications of Illinois, Inc., TCG Illinois and TCG Chicago | ) | |
| Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements With Illinois Bell Telephone Company d/b/a SBC Illinois Pursuant to Section 252(b) of the Telecommunications Act of 1996 | ) | Docket No. 03-0239 |

# SBC ILLINOIS' POST-HEARING REPLY BRIEF


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# SBC ILLINOIS' POST-HEARING REPLY BRIEF

Illinois Bell Telephone Company ("SBC Illinois") replies below to selected arguments in AT&T's and Staff's initial briefs.[1] First, however, we address a concern that bears on AT&T's treatment of numerous issues.

There are issues on which AT&T's initial post-hearing brief did not address major arguments that SBC Illinois presented in its testimony, and that AT&T therefore could readily have addressed. On UNE Issue 31, for example, SBC Illinois' prefiled testimony explained precisely why AT&T's language goes too far, namely, because it would require use of the LSR process for resold services even though the LSR process cannot be used for that purpose. AT&T's initial brief on UNE Issue 31 ignores that explanation.

This creates the possibility that AT&T could (even if unintentionally) effectively "sandbag" SBC Illinois, by including in its reply brief discussion that it could have and should have included in its initial brief. If that occurs, SBC Illinois will likely move either to strike or for leave to reply to such discussion, on the ground that SBC Illinois would have had that

[1] We cite AT&T's initial brief as "AT&T Br.," Staff's initial brief as "Staff Br." and SBC Illinois' initial brief as "SBC Br."

opportunity in this reply brief if AT&T had included the discussion in its initial brief, and that it would not be fair for AT&T to get the unrebutted last word merely by having failed to include the discussion in its initial brief.

## DISCUSSION OF THE ISSUES

**GTC:**

**ISSUE 1.a:** **Should the change of law provision apply at the effective date of the agreement or from February 19, 2003?**

**Section 1.3.0**

**SBC Illinois Testimony: None.**

**SBC Illinois' Initial Brief: pp. 2-5.**

SBC Illinois' initial brief on this issue, and Staff's brief in support of SBC Illinois' position (at pages 3-9), fully address all the arguments in AT&T's initial brief that warrant response.

**ISSUE SBC-1:** **Should the parties' interconnection agreement, when it is approved by this Commission (the "Agreement Approval Date"), reflect (i) order(s) and regulations, if any, that the FCC promulgates before the Agreement Approval Date in its Triennial Review proceeding, along with the decision of the United States Court of Appeals for the D.C. Circuit in *United States Telecom Association, et al. v. FCC,* No. 00-1012 ("*USTA*"); and (ii) the decision, if any, that the United States District Court for the Northern District of Illinois renders before the Agreement Approval Date in Case No. 02-C-6002, SBC Illinois' pending challenge to this Commission's 801 Order (the "801 Case").**

**SBC Illinois Testimony: None.**

**SBC Illinois' Initial Brief: p. 6.**

SBC Illinois' initial brief on this issue addresses all the arguments in AT&T's initial brief that warrant response.

**GTC:**

**ISSUE 1.b:** **Should either party be obligated to renegotiate a change in law that is not applicable and materially affects this agreement?**

**Section 1.3.0**

**SBC Illinois Testimony: None.**

**SBC Illinois' Initial Brief: pp. 7-12.**

SBC Illinois' initial brief on this issue addresses all the arguments in AT&T's initial brief that warrant response.

**GTC:**

**ISSUE 1.d: Should there be a final and nonreviewable standard for dispute resolution related to change in law?**

**Sections 1.3.0 and 1.3.1**

**SBC Illinois Testimony: None.**

**SBC Illinois' Initial Brief: 13-16.**

SBC Illinois' initial brief on this issue, and Staff's brief in support of SBC Illinois' position (at pages 9-11), address all the arguments in AT&T's initial brief that warrant response.

**GTC:**

**ISSUE 2.a:** **Is it appropriate to replace a commercially reasonable capped indemnification exposure with non-capped damages when such unlimited damages were not factored into SBC's cost studies underlying the UNEs and services provided under this agreement?**

**Sections 1.7.1.2 and 1.7.2.1**

**SBC Illinois Testimony: Watkins Direct, lines 45-91; Watkins Rebuttal, pages 1-7.**

**SBC Illinois' Initial Brief: pp. 17-22.**

Staff and AT&T are overlooking an important aspect of this issue, which we illustrate with a hypothetical:

Assume that SBC Illinois negligently processes a large AT&T UNE-P order, and AT&T suffers $50,000 damages as a result. Under the performance measures and remedy plan incorporated in the Agreement, SBC Illinois' performance shortfalls yield a penalty of, say, $15,000, payable by SBC Illinois to AT&T. Also, though, AT&T brings a claim against SBC Illinois for damages suffered as a result of SBC Illinois' mistakes. Bear in mind that the parties have agreed that, generally (except for the carve-outs that are the subject of this issue) SBC Illinois' liability is capped at the amount it charged or would have charged for the affected services. How much more should AT&T, having been paid the $15,000 penalty, be allowed to recover from SBC Illinois? Answer under each of two assumptions: (1) AT&T would have paid SBC Illinois $10,000 for the services covered by the order; and (2) AT&T would have paid SBC Illinois $20,000 for the services covered by the order.

Staff's and AT&T's arguments are devoted solely to establishing that the liability cap AT&T and SBC Illinois have agreed to should not be allowed to override SBC Illinois' obligation to pay the $15,000 penalty required by the Commission-approved performance measures and remedy plan – in other words, that SBC Illinois should not be able to limit its penalty payment to $10,000 under assumption (1). For purposes of this reply brief only, SBC

Illinois accepts that proposition, and agrees that under assumption (1), it should have to pay the $15,000 penalty under the remedy plan, even though AT&T would have paid only $10,000 for the affected services. When AT&T brings its claim against SBC Illinois, however, AT&T plainly should be allowed no additional recovery, because SBC Illinois has paid AT&T the $15,000 penalty, and the parties have agreed that SBC Illinois' liability for this transaction should be capped at $10,000. The carve-out for remedy payments ensured that SBC Illinois paid the entire $15,000 penalty, but with that payment, the cap has been reached (exceeded, actually), so AT&T should be allowed no additional recovery.

Consider next assumption (2), where AT&T would have paid SBC Illinois $20,000 for the services. How much should AT&T be able to recover from SBC Illinois in that scenario? Clearly, $5,000. SBC Illinois' total liability is capped at $20,000; SBC Illinois has paid the $15,000 penalty; and with an additional payment of $5,000, the cap is reached.

The problem with Staff's and AT&T's proposed language is that it results in AT&T recovering a total of $25,000 under assumption (1) (instead of the $15,000 it should recover) and $35,000 under assumption (2) (instead of the $20,000 it should recover). This is because Staff's and AT&T's language goes beyond ensuring that remedy plan payments, Commission-imposed bill credits and the like will not be overridden by the contractual limitation on liability – which Staff and AT&T say is their aim. What Staff's and AT&T's language does is to *not count* performance measures penalties, bill credits and the like *at all* in the calculation whether the cap has been reached.

Significantly, neither Staff nor AT&T argues that the carve-outs should not count at all in the calculation whether the cap has been reached. They do not, in other words, justify this aspect of their proposed language. Indeed, they probably do not even intend it – their only intent, it

appears, is to ensure the payment in full, notwithstanding the contractual liability cap, of FCC- or Commission-imposed payment obligations.

Accordingly, if the Commission is otherwise inclined to accept AT&T's and Staff's approach (which it should not for the reasons set forth in SBC Illinois' initial brief), the Commission should adopt the language proposed by Staff at page 16 of its initial brief, but modified as indicated:

> 1.7.1.2 ~~Except for 1) indemnity obligations expressly set forth herein or, 2) obligations under the financial incentive or remedy provisions of any service quality plan required by the FCC or the ICC, 3) bill credit remedies and damages in connection with failure to provide adequate carrier-to-carrier service quality or to meet the carrier-to-carrier service quality standards (or "Performance Measurements") as set forth in Article 32 to this Agreement, or 4) obligations otherwise expressly provided in specific appendices or attachments, e~~Each Party's liability to the other Party for any Loss relating to or arising out of such Party's performance under this Agreement, including any negligent act or omission, whether in contract, tort or otherwise, including alleged breaches of this Agreement and causes of action alleged to arise from allegations that breach of this Agreement also constitute a violation of a statute, including the Act, shall not exceed in total the amount SBC-Illinois or AT&T has charged or would have charged to the other Party for the affected Interconnection, Resale Services, Network Elements, functions, facilities, products and service(s) that were not performed or were improperly performed. Provided, however, that in no event shall the limitation of liability set forth in the preceding sentence apply in such a way as to as to reduce the amount of any 1) indemnity obligations expressly set forth herein, 2) obligations under the financial incentive or remedy provisions of any service quality plan required by the FCC or the ICC, 3) bill credit remedies and damages in connection with failure to provide adequate carrier-to-carrier service quality or to meet the carrier-to-carrier service quality standards (or "Performance Measurements") as set forth in Article 32 to this Agreement, or 4) obligations otherwise expressly provided in specific appendices or attachments. "Loss" is defined as any and all losses, costs (including court costs), claims, damages (including fines, penalties, and criminal or civil judgments and settlements), injuries, liabilities and expenses (including attorney's fees).

**GTC:**

**ISSUE 4:** **When AT&T orders out of a tariff, should AT&T be bound by the terms and conditions of the tariff, or may it pick and choose terms and conditions from the ICA for such tariff offerings?**

**Sections 1.1.1 and 1.30.2**

**SBC Illinois Testimony: Watkins Direct, lines 109-164; Watkins Rebuttal, pages 8-10.**

**SBC Illinois' Initial Brief: pp. 23-25.**

The parties have not reported this issue as resolved, but the resolution appears to be a foregone conclusion. SBC Illinois' brief and Staff's brief advocate the same language (*see* SBC Br. 23-24; Staff Br. 24-25), and AT&T has said "AT&T is willing to accept the resolution of this issue recommended by Staff witness Dr. Zolnierek." AT&T Br. 16. To be sure, some of the language that Staff recommends in its brief did not appear in Dr. Zolnierek's testimony (because Dr. Zolnierek did not recite all the contract language he had in mind), but AT&T has offered no reason for the Commission to reject any of the language Staff has proposed. Accordingly, the Commission should adopt the language that appears at pages 24-25 of Staff's initial brief as its resolution of this issue.

**GTC:**

**ISSUE 5: Should the TELRIC rates in the Pricing Schedule be automatically updated when the rates change based upon ICC or FCC proceedings affecting wholesale prices, including tariff revisions, or should an amendment be required to incorporate such rate changes?**

**Section 1.30.4 and Footnote to Pricing Schedule**

**SBC Illinois Testimony: Watkins Direct, lines 165-189.**

**SBC Illinois' Initial Brief: pp. 26-28.**

This issue concerns (1) the point in time at which new Commission-ordered rates will become effective under this Agreement, and (2) whether such new rates will be memorialized in the Agreement.

In addition to addressing those matters, however, Staff also "recommends that language be added requiring SBC to file a compliance tariff within 30 days of the date of the final order setting [a new] rate" (Staff Br. 28), and then proposes such language (Staff Br. 29 ("SBC is to file a compliance tariff within thirty (30) days of the date of any final order modifying a rate contained on the Pricing Schedule, or setting a new rate that is to be included on the Pricing Schedule.").) This is a bad recommendation.

The reason it is a bad recommendation is not that there would necessarily be anything wrong with the Commission requiring SBC Illinois to file a compliance tariff within a set number of days after an order modifying a rate or setting a new rate. If the Commission is going to impose such a requirement, though, it cannot properly do so in this docket. The sole purpose of *this* proceeding is to establish the terms and conditions on which SBC Illinois and one CLEC – AT&T – will be doing business under their interconnection agreement. This is not an appropriate forum for establishing rules about tariffing.

Differently put, the sole purpose of the AT&T/SBC Illinois interconnection agreement is to set forth SBC Illinois' and AT&T's contractual duties *to each other*, and the sole purpose of

this proceeding is to determine what those duties will be. But the sentence Staff proposes has nothing to do with these two parties' contractual duties to each other. This becomes crystal clear when one considers what would happen if the Commission were to impose that sentence on the Agreement, and if SBC Illinois were to breach the duty set forth in that sentence – *i.e.*, if SBC Illinois failed to file a compliance tariff within thirty days after a Commission Order setting a new rate. That "breach" by SBC Illinois would be a matter of indifference to AT&T (at least in its capacity as a party to this Agreement). Everything that AT&T is concerned about is dealt with by the *other* parts of Staff's recommendations, *i.e.*, the parts that address the issue the parties presented. Once it is established when a newly ordered rate goes into effect under this Agreement, and whether or not that new rate will be reflected in the Agreement, SBC Illinois' tarrifing of the new rate is neither here nor there as far as AT&T's contractual relationship with SBC Illinois is concerned.

Whatever else it does in its resolution of this issue, the Commission should not accept Staff's proposal to promulgate a rule requiring SBC Illinois to tariff Commission-ordered rates.

**GTC:**

**ISSUE 7: Should CLEC's be responsible for the cost associated with changing their records in SBC Illinois' systems when CLECs enter into a merger, assignment, transition, etc. agreement with another CLEC?**

**Section 1.47.1**

**SBC Illinois Testimony: Watkins Direct, lines 191-241; Watkins Rebuttal, pages 10-14.**

**SBC Illinois' Initial Brief: pp. 33-36.**

This issue exists because SBC Illinois proposed language that says AT&T "is responsible for costs of implementing any changes to its OCN/ACNA whether or not it involves a merger, consolidation, assignment or transfer of assets," and AT&T took the position it should not be responsible for such costs. Now, everyone agrees AT&T should be responsible for such costs. Hanson (Staff) lines 96-107; AT&T Br. 23. Given that, the resolution of the issue would seem obvious: SBC Illinois' language saying AT&T is responsible for the costs should be adopted.

Staff, however, with AT&T now concurring (*id.*) says no, the Agreement should provide that the cost of implementing the changes will be determined through the BFR process. As we explained in our initial brief (at 35-36), Staff's proposal improperly asks the Commission to resolve an issue that the parties did not present for arbitration; is based on an asserted concern (*i.e.*, that SBC Illinois may charge AT&T more than its costs) that is inconsistent with SBC Illinois' language (which by its terms allows SBC Illinois to recover only its costs); and asks the BFR process to perform a function for which it is not suited. Staff attempts to refute these points (Staff Br. 30-31), but without success.

First, Staff denies it is creating a new issue, and says it really is only "recommending . . . a mechanism by which SBC's proposal can be effectuated" and "imposing a condition that is required to ensure that the Commission knows what it is approving when it accepts SBC's proposal" *Id*. at 31. That does not wash. Once the Commission approves language that says AT&T is responsible for the costs, the parties – both of them big, resourceful companies – can

devise a mechanism to give that language effect. If they disagree, they will have recourse to the dispute resolution provisions in the Agreement. And Staff's concern that the Commission needs to know more about what it is approving is baseless. The Commission will be approving language that states in clear and unambiguous terms what everyone now agrees: AT&T will bear certain costs. Granted, the Commission should not approve language it does not understand, or that it has reason to believe has special hidden meaning that is unknown to the Commission. But the Commission should not be uncomfortable about approving language that is absolutely clear and that has no hidden meaning merely because the Commission does not know how the parties will give effect to the language.

Next, Staff says that "SBC has not indicated or provided any evidence that the BFR process can not be used for the purpose recommended by Staff." Staff Br. 31. That is incorrect. SBC Illinois' witness attached the tariffed description of the BFR process to her rebuttal testimony; explained why the process as described was not an appropriate process for dealing with OCN/ACNA changes; and testified that the BFR process would have to be redefined if Staff's proposal were accepted. SBC Br. 36. Furthermore, it was not SBC Illinois' job to explain why the BFR process was inappropriate in any event. It was Staff's job, as the proponent of the process, to explain why the process was appropriate, and Staff did not do that.

Finally, Staff's proposed language is not even consistent with Staff's position. Staff agrees that AT&T should be responsible for the costs in question, but it proposes to delete the language to that effect from the Agreement, and to replace it with language that says how the cost will be determined. Staff Br. 31. A provision that says how a cost will be determined without saying who will pay the cost is not of much use.

AT&T is big enough to take care of itself. If AT&T was concerned about how these costs would be calculated, it could have said so during the parties' negotiations and could have

made that the arbitration issue. Instead, AT&T staked out the position that it should not be responsible for the costs at all. The only question before the Commission is whether AT&T is right or wrong about that, and everyone now agrees AT&T is wrong. If the Commission goes the additional step that Staff recommends, it will violate section 252(b)(4)(A) of the 1996, which commands that "[t]he State commission shall limit its consideration . . . to the issues set forth in the petition and in the response."

For all these reasons, and the reasons set forth in SBC Illinois' initial brief, the Commission should reject Staff's proposed language and accept SBC Illinois'.

**INTERCONNECTION:**

**ISSUE 1:** **Where SBC elects to subtend another LEC's tandem switch for exchange access and intraLATA toll traffic, may AT&T interconnect indirectly to SBC via such tandem for local traffic?**

**Sections 3.2.5.1 and 3.2.5.2**

**SBC Illinois Testimony: Mindell Direct, lines 835-908; Mindell Rebuttal, lines 20-43.**

**SBC Illinois' Initial Brief: pp. 37-39.**

AT&T's brief makes clear that its proposal for indirect interconnection would require SBC Illinois to pay for transport from its rural exchanges to the Verizon tandems as far as 25 miles away. AT&T Br. 31. While AT&T previously took care to conceal this fact , its position is now clear. If traffic originates on AT&T's network, AT&T properly recognizes that it must transport that traffic to the SBC Illinois exchange because that is where the POI is located. If the traffic originates on SBC Illinois' network, however, AT&T expects SBC Illinois to pay Verizon to "transit" the traffic between SBC Illinois' exchange and the Verizon tandem, at which point it is handed off to AT&T. AT&T has no right to this, because under this scenario the SBC Illinois/AT&T POI is not "within" SBC Illinois' network, as it must be by law[2] – it is at the Verizon tandem. AT&T argues that since SBC Illinois has a POI with Verizon within SBC Illinois' territory, that should be good enough. *Id*. That completely misses the point. This Agreement addresses interconnection between SBC Illinois and AT&T – not between SBC Illinois and Verizon. The point of interconnection between SBC Illinois and AT&T must take place "within" SBC Illinois' network for traffic in both directions and AT&T's proposal fails to achieve that.

[2] Section 251(c)(2) of the 1996 Act requires the incumbent to provide interconnection only "at any technically feasible point *within* the carrier's network." (Emphasis added.)

AT&T's language is a bad proposal and it would be bad policy for the State of Illinois. Since AT&T's argument is premised on section 251(a) of the 1996 Act, it applies to all local exchange carriers and it would require *any and all* Illinois local exchange carriers – no matter how small – to interconnect with AT&T in this fashion and to incur the costs of transporting traffic 25 miles (or more) outside of their exchange boundaries, solely for AT&T's convenience and financial benefit. Staff properly advises against AT&T's proposal. Staff Br. 32-34.

One final point. Staff has revised its proposed language for section 3.2.5.2 to make it clear that SBC Illinois remains responsible for the facilities on its side of the POI. This modification is acceptable to SBC Illinois.

**INTERCONNECTION:**

**ISSUE 2: Does AT&T have the right to use UNEs for the purpose of network interconnection on AT&T's side of the POI?**

**Section 3.3.2**

**SBC Illinois Testimony: Pellerin Direct, lines 2056-2122; Pellerin Rebuttal, lines 141-176.**

**SBC Illinois' Initial Brief: pp. 40-42.**

SBC Illinois' initial brief fully addresses the issues raised by AT&T and Staff. SBC Br. 40-42; AT&T Br. 33-37; Staff Br. 34-36. Both AT&T and Staff propose that there be no limitation on AT&T's use of unbundled transport for interconnection. Given that the Triennial Review Order will be issued any day now, and given that the FCC's press release so clearly announced that unbundled transport *may not* be used for interconnection, this is quite surprising. Even under AT&T's theory, it should be permitted to use unbundled transport for interconnection only to the extent authorized by FCC rules. Indeed, AT&T's entire position in testimony and brief is premised on these FCC rules. Its proposed contract language, however, is far broader, because it would provide AT&T an unfettered right to use UNE transport for interconnection with no linkage to FCC rules in general or to the outcome of the Triennial Review in particular. This is a serious shortcoming and is further reason why AT&T's language should be rejected in favor of SBC Illinois' proposal.

**INTERCONNECTION:**

**ISSUE 3: What terms apply to AT&T's intra-building interconnection to SBC Illinois?**

**Section 3.3.3**

**SBC Illinois Testimony: Bates Direct, lines 240-425; Mindell Direct, lines 39-118.**

**SBC Illinois' Initial Brief: pp. 43-46.**

This issue is addressed in the discussion under Collocation Issue 2b.

**INTERCONNECTION:**

**ISSUE 5:** **Are there reasonable limitations on AT&T's right to interconnection with SBC Illinois free of any charge? For instance, is AT&T entitled to receive expensive interconnection, FX interconnection, and interconnection outside SBC's franchised territory free of charge as discussed further in issues 6-9.**

**Section 4.3.1**

**SBC Illinois Testimony: Mindell Direct, lines 119-205.**

**SBC Illinois' Initial Brief: p. 47.**

AT&T's brief raises no new issues with respect to Interconnection Issue 5 and SBC Illinois rests on its Initial Brief.

**INTERCONNECTION:**

**ISSUE 6:** **In one-way trunking architectures, does SBC Illinois have an obligation to compensate AT&T for any transport used by AT&T to terminate Local/IntraLATA traffic originated by SBC Illinois if AT&T's POI and/or switch is outside the local calling area and the LATA where the call originates?**

**ISSUE 7:** **When AT&T has requested a POI located outside the local calling area of SBC Illinois' end user originating the call, should AT&T be financially responsible for the transport outside the local calling area for Local/IntraLATA traffic originated by SBC Illinois.**

**Section 4.3.2.1, 4.3.2.2, 4.3.3, 4.3.3.1 and 4.3.3.2**

**SBC Illinois Testimony: Mindell Direct, lines 206-641; Mindell Rebuttal, lines 66-251.**

**SBC Illinois' Initial Brief: pp. 48-59.**

AT&T fails to address SBC Illinois' showing that AT&T is hiding behind the "single point of interconnection" rule when in fact it has multiple points of interconnection and multiple switches in the Chicago LATA. AT&T is abusing the transport arrangement by requiring SBC Illinois to transport traffic to distant AT&T switches when there are switches that are much closer that would serve just as well. Staff recognizes that SBC Illinois' position is "meritorious" in theory, but is unwilling to change its recommendation due to "insufficient information." Staff Br. 40. The Commission should not be so restrained. The record contains all the facts that are needed, and those facts conclusively show that AT&T has at least 16 switches in the Chicago LATA at six different locations (Lisle, Oak Brook, Rolling Meadows and three Chicago locations). Mindell Rebuttal lines 150-151. There is no question that it is "technologically feasible " for SBC Illinois to hand off traffic to AT&T at any of these locations. The table at lines 188-189 of Mr. Mindell's rebuttal testimony shows that SBC Illinois has direct connections to each of these AT&T switches and is delivering traffic to each one of them today. Staff's concern about potential "technological limitations" in AT&T switches (Staff Br. 41) is misplaced and, on its face, has no factual foundation. . There is really no question that AT&T can accept

traffic at any of these locations, and AT&T does not contend otherwise. Thus, the record fully supports a finding that AT&T should, at the very least, be required to pay for excess transport when it asks SBC Illinois to transport traffic further than the AT&T switch closest to the point of origination on SBC Illinois' network. This argument applies with even more force to Interconnection Issue 8.

As for Staff's point that SBC Illinois' proposed language does not accurately reflect this proposal, (Staff Br. 40) the Commission can easily remedy that situation by making it clear that SBC Illinois will provide transport from its originating switch to the closest AT&T switch, but that AT&T is required to pay for any transport beyond that distance.

The Commission decision in Docket No. 01-0614 does not foreclose consideration of Interconnection Issues 6 and 7. AT&T Br. 56; Staff Br. 37-38. In that docket the Commission never addressed whether a CLEC interconnection was "expensive interconnection" within the meaning of the FCC's *Local Competition Order* ¶ 199 and the order does not indicate that any ILEC presented evidence that a particular type of CLEC architecture necessarily creates "expensive interconnection". These are issues are unique to this case, and the Commission is free to address them here[3].

Nor does the Commission's decision in the Verizon GNAPs arbitration case, Docket No. 02-0253, *Order on Rehearing* issued November 7, 2002, create a bar to SBC Illinois' claim. While that decision addresses "expensive interconnection", it involves a CLEC with a single point of interconnection. AT&T, in contrast, has at least 16 switches deployed in 6 locations in the Chicago LATA. Mindell Rebuttal lines 150-151. More fundamentally, to the extent this case found that expensive interconnection is simply a more costly version of interconnection that

[3] The legal arguments raised by SBC Illinois in interconnection issues 5, 6, 7 & 8 apply to all of those issues, regardless of the specific section of the brief in which the discussion appears. Thus, when SBC Illinois discusses the impact of the Docket No. 01-0614 under Interconnection Issue 6 & 7, it applies equally to Interconnection Issue 8.

does not include increased transport -- it is simply wrong. In *MCI Telecom Corp. v. Bell-Atlantic Pennsylvania* 271 F.3d. 491 (3rd Cir. 2001) and *U.S. West Communications, Inc. v. Jennings*, 304 F.3d. 950 (9th Cir. 2002), the courts found that it *would be* appropriate to shift excess transport costs to the CLEC in this situation. In the face of these federal decisions, any Commission determination that it cannot shift excess transport costs to the CLEC would clearly be incorrect. This is especially true since "expensive interconnection" can *only* mean transport, a fundamental fact that the Verizon GNAPs arbitration order overlooks. The costs of interconnection, i.e., the physical linking of two networks at the point of interface, are always born equally by the ILEC and the CLEC. For example, if the connection is to be by coaxial cable, each party brings a coaxial cable to the designated point of interconnection. If the interconnection is to be accomplished by means of fiber, each party brings a fiber strand and provisions the appropriate electronics in its network. "Expensive interconnection", as that term was used by the FCC, could only mean transport.

Finally, Staff argues that Mr. Mindell's analysis compares "the cost of connecting SBC and AT&T's network to the cost of interconnecting SBC Illinois' own network". Staff Br. 40. This is not at all the case. The point of Mr. Mindell's analysis was to calculate the total cost of excess transport that SBC Illinois provides under AT&T's interconnection scheme. Mindell Direct lines 388-551; Mindell Rebuttal lines 110-119. To do this, Mr. Mindell calculated SBC Illinois' cost of interoffice transport – and this is the same cost whether the interoffice transport runs between SBC Illinois' switches or between an SBC Illinois switch and an AT&T switch. Staff attempts to create a distinction where none exists.

**INTERCONNECTION:**

**ISSUE 8:** **When AT&T has requested a POI located outside the local calling area of SBC Illinois' end user originating the call, should AT&T be financially responsible for the transport outside the local calling area for FX traffic originated by SBC Illinois.**

**Sections 4.3.3, 4.3.3.1, and 4.3.3.2**

**SBC Illinois Testimony: Mindell Direct, lines 643-831; Mindell Rebuttal, lines 252-329.**

**SBC Illinois' Initial Brief: pp. 60-64.**

FX calls present a special case because these are really toll calls for which the billing system has been tricked to treat as local. SBC Illinois is entitled to charge AT&T for the excess transport on these FX calls because SBC Illinois cannot bill its own end user and SBC Illinois – in all fairness – should be compensated for the transport service it provides. This is especially so since AT&T has at least 16 switches in 6 different locations in the Chicago LATA – so there are a number of switches where SBC Illinois could hand off traffic to AT&T in a mutually beneficial arrangement. Despite this undisputed fact, AT&T does not ask that SBC Illinois hand off traffic at the closest switch. To the contrary, in the majority of cases discussed AT&T instructs SBC Illinois to haul traffic further away than the nearest AT&T switch and further away in the same direction. Mindell Rebuttal lines 188-195. This cannot be explained by any requirement of basic interconnection. AT&T can (and does) instruct SBC Illinois to hand traffic off at nearby switch locations when it suits AT&T's purpose. Where it does not suit its purpose (i.e., where AT&T wants free transport to a distant location) it instructs SBC Illinois to transport traffic as far away as 35 miles. It is in these "FX" situations where SBC Illinois is most clearly entitled to charge a modest, TELRIC-based transport rate to AT&T for the excess transport AT&T uses.

SBC Illinois has agreed to Staff's request that the proposal for FX traffic be reciprocal. SBC Br. 62-63. Staff contends that SBC Illinois' agreement to make its FX proposal reciprocal is unclear and illustrates it point by using the following hypothetical: "consider a call from an

AT&T customer to an SBC customer where SBC is providing FX or FX-like service and the POI between the carriers is beyond 15 miles from the exchange in which the AT&T customer's and the SBC Illinois customer's telephone numbers are located." Staff Br. 42. The problem with Staff's hypothetical – and therefore its entire point --- is that this can never happen. There is *always* an SBC switch within 15 miles of the AT&T switch where the call originates, and AT&T can *always* hand the call off to SBC at that point because SBC does not separate the "rating" and the "routing" of its calls. Mindell Rebuttal lines 318-325; SBC Illinois Br. 62-63. In other words, SBC Illinois never asks AT&T to transport an FX call more than 15 miles. Accordingly, Staff's criticism of SBC Illinois' proposal is altogether misplaced.

**INTERCONNECTION:**

**ISSUE 9:** **When AT&T has requested a POI located outside the local calling area of SBC Illinois' end user originating the call, should AT&T be financially responsible for the transport outside the local calling area for FX Traffic originated by SBC Illinois?**

**Sections 4.3.1 and 4.3.2**

**SBC Illinois Testimony: Mindell Direct, lines 909-942; Mindell Rebuttal, lines 44-65.**

**SBC Illinois' Initial Brief: pp. 65-68.**

Staff recommends that the Commission adopt SBC Illinois' proposed language for section 4.3.1. Staff Br. 43-44. Staff correctly recognizes that AT&T must establish a point of interconnection "within" SBC Illinois' network. That means that the point of interconnection must lie within the exchange boundaries of each of the four rural exchanges at issue in this case. AT&T argues that it need not establish "its own POI" and that it may use the POI of a third-party carrier such as Verizon. AT&T Br. 64. In AT&T's view, "where two carriers interconnect indirectly, they do not have to have a (direct) POI". *Id*. This is double-talk. The contract language addresses the point of interconnection between AT&T's network and SBC Illinois' network. AT&T cannot escape responsibility for establishing its own point of interconnection by claiming that a different point of interconnection between SBC Illinois and Verizon satisfies the requirement that a POI be located "within" SBC Illinois' network. In reality, AT&T wants there to be two POIs. The SBC Illinois/Verizon POI (to satisfy the requirement that a POI be established "within" SBC Illinois' network) and a SBC Illinois/AT&T POI at the Verizon tandem (to make sure that SBC Illinois will have to pay for transport from its own exchange to the Verizon tandem). This is not a fair outcome and it is not the outcome mandated under the law. AT&T can "indirectly" interconnect with SBC Illinois by using the transport facilities of a third-party carrier, but as Staff correctly notes, AT&T must establish its own POI within SBC Illinois' service territory.

**INTERCONNECTION:**

**ISSUE 10: Should the charges for the use of each Party's SS7 network be reciprocal?**

**Section 23.7.1**

**SBC Illinois Testimony: Chapman Direct, lines 1708-1870; Novack Direct, lines 42-96.**

**SBC Illinois' Initial Brief: pp. 69-74.**

SBC Illinois makes three points about AT&T's brief on this issue.

*First*, AT&T's proposal is fatally flawed because it uses SS7 connections purchased from the *access tariff* to terminate *local signaling traffic.* It is clear from AT&T's brief that it has no intention of establishing separate connections for local traffic and access traffic. Rather, AT&T asserts that any distinction point between local traffic and access traffic is "a distinction without a difference". AT&T Br. 70. AT&T is wrong as a mater of law because an interstate access arrangement cannot be used for local traffic signaling. *See* Docket No. 96-0404 discussed at SBC Br. 71. A further illustration of AT&T's jurisdictional confusion is provided by its complaint that it is charged $30,000 per month for D-Links. AT&T Br. 69. Those charges are for D-Links purchased under the access tariff over which AT&T sends access signaling traffic. SBC Illinois is simply charging the tariffed rate for a service that AT&T ordered, and it cannot provide the "rebates" AT&T is requesting by its proration proposal. If AT&T wants to avoid those D-Link charges, it should establish a separate connection for local signaling traffic and SBC Illinois will do likewise under its proposal.

*Second*, AT&T is very clear that the only reason it is proposing reciprocal billing for SS7 signaling is because of "imbalance in the originating traffic flows between the Companies". AT&T Br. 71. As Mr. Mindell testified, however, much of this imbalance is due to FX traffic, (Mindell Rebuttal lines 204-329), and AT&T is not permitted to charge reciprocal compensation

on FX traffic to begin with. Thus, AT&T's proposal would "backdoor" the current Commission rule that bars reciprocal compensation on FX traffic and should be rejected.

*Third*, Ms. Chapman testified that there are SS7 costs included in the reciprocal compensation rates that both parties currently charge one another. Tr. 167. Accordingly, no additional SS7 charges are appropriate. In any event, AT&T should not be permitted to institute a new charge that recovers SS7 costs that are already included in its reciprocal compensation rate. This is reason enough to object AT&T's proposal and to adopt SBC Illinois' proposal that each Company provide its own links and ports and exchange SS7 signaling without charges to one another.

**UNE:**

**ISSUE 1: Should the ICA definition of Network Elements be that from the Illinois Public Utilities Act?**

**Sections 91.1, 9.1.2, 9.1.3, 9.2.1, 9.2.3 and 9.2.5.1**

**SBC Illinois Testimony: Niziolek Direct, lines 138-196; Niziolek Rebuttal, lines 20-75.**

**SBC Illinois' Initial Brief: pp. 75-80.**

AT&T argues that the terms Network Elements and Unbundled Network Elements are "essentially interchangeable" and that SBC Illinois' unbundling and combining obligations under Section 13-801 of the Illinois PUA and the Order in Docket 01-0614 "apply to all 'network elements' as defined in Section 13-216" of the PUA. AT&T Br. 72. For the reasons discussed in the initial briefs of SBC Illinois (pp. 75-80) and Staff (pp. 44-49), AT&T's argument is without merit. In fact, AT&T's argument that SBC Illinois is obligated to provide access to, and combine, any and all "network elements" as broadly defined in Section 13-216 is virtually identical to arguments made by CLEC parties (including AT&T) and rejected by the Commission in Docket 01-0614.

For example, the CLECs in Docket 01-0614 argued that Section 13-801(d)(3) should be interpreted as requiring SBC Illinois to combine at a CLEC's request any "network elements" that SBC Illinois combines for itself. Consistent with the language of Section 13-801(d)(3) (which refers to "unbundled network elements"), however, the Commission rejected the CLECs' proposal and, instead, approved tariff language proposed by Staff for the EELs tariff indicating that SBC Illinois is not required to provide a new combination if the combination "contains a network element that the Commission does not require the Company to provide as an Unbundled Network Element." *Order*, Docket 01-0614 at ¶ 167. The Commission further ordered that this same language indicating that SBC Illinois is not required to combine network elements that have not been unbundled should also be included in the tariffs governing network element

platform combinations. In support of that decision, the Commission stated that "we can think of no reasoned basis" for a "distinction" between the "unbundling obligation as it pertains to the UNE-P and the unbundling obligation as it relates to EELs." *Id.*, ¶ 168.

As SBC Illinois discussed in its Initial Brief (p. 79), it was only in the limited context of requests for an existing "network elements platform" (which is described in Section 13-801(d)(4) of the PUA as a combination of network elements used to provide end-to-end service without the CLEC's use of its own facilities) that the Commission in Docket 01-0614 ruled that SBC Illinois can be required to provide certain network elements (such as a splitter) that have not been unbundled. *Order*, Docket 01-0614 at ¶ 75. In support of that ruling, the Commission relied on the fact that Section 13-801(d)(4) (unlike Sections 13-801(d)(1) and (3)) does not include the word "unbundled." *Id.*, ¶ 76.[4]

The Commission should reject AT&T's attempt to impose on SBC Illinois obligations with respect to the provision and combining of network elements that go beyond the obligations imposed in Docket 01-0614. As discussed in SBC Illinois' Initial Brief (pp. 77-78), AT&T's broad interpretation of Section 13-801 would create obligations that are plainly contrary to, and preempted by, the 1996 Act, which expresses Congress' intent to limit the network elements for which ILECs must provide CLECs access to those network elements that meet the "necessary and impair" tests for unbundling. 47 U.S.C. §§ 251(c)(3), 251(d)(2); *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 390 (1999); *United States Telecom Ass'n v. FCC*, 290 F.3d 415,

[4] The Commission also relied on Section 13-801(d)(6) which provides that an existing network elements platform must be transferred, if so requested, with all current end user features in place and without disruption to the end user's services. This rationale does not apply to requests that SBC Illinois perform the work of combining network elements to create new UNE combinations (including new UNE platforms), as such new UNE combinations are, by definition, created to provide new services, or to serve new customers and, therefore, the possibility of service disruptions is not an issue. Moreover, as discussed, the obligation to perform the work of creating new network elements combinations (including new platforms) is governed by Section 13-801(d)(3), which refers to "unbundled network elements."

425 (D.C. Cir. 2002). AT&T's interpretation of Section 13-801 is, therefore, contrary to Section 13-801(a), which indicates that the provisions of Section 13-801 are to be interpreted and applied in a manner "not inconsistent with the 1996 Act" and not "preempted by orders of the Federal Communications Commission." 220 ILCS 5/13-801(a). AT&T's interpretation of Section 13-801 is also contrary to the well established rule that, wherever possible, a statutory interpretation "which renders a statute unconstitutional or otherwise invalid should be discarded." *Northwest Airlines, Inc. v. Department of Revenue*, 295 Ill.App.3d 889, 893 (1st Dist. 1998); *Craig v. Peterson*, 39 Ill.2d 191, 223 N.E.2d 345, 351 (1968).[5]

AT&T also argues that nothing in Section 13-801 limits SBC Illinois' unbundling or combining obligations "to only those unbundled network elements (UNEs) defined by the FCC on the minimum national list of UNEs an ILEC must provide." AT&T Br. 73. This argument is a straw man. In this proceeding, SBC Illinois has not argued, nor does SBC Illinois' proposed contract language suggest, that the Commission may not add UNEs to the FCC's "minimum national list." Rather, the position that SBC Illinois has taken is that AT&T's proposed language for sections 9.1.1, 9.1.2, 9.1.3, 9.2.1, 9.2.3, and 9.2.5.1 should be rejected because it improperly suggests that SBC Illinois has a broad obligation to provide AT&T with access to network elements that SBC Illinois has not been required to unbundle by either the FCC or this Commission.

SBC Illinois has also argued that, to the extent the Commission has authority to order the unbundling of network elements, it must comply with and conduct all of the analyses (including application of the "necessary and impair" standard) required by the 1996 Act. As SBC Illinois

[5] Where, as in the case of the "necessary and impair" standard, Congress has made a specific "policy judgment" as to how the "law's congressionally mandated objections" would be "best promoted," the States are not at liberty to deviate from those "deliberately imposed" federal prerogatives. *Geier v. American Honda Motor Co.*, 529 U.S. 861, 872 (2000) (conflicts between state and federal law that "prevent or frustrate the accomplishment of a federal objective . . . are nullified by the Supremacy Clause).

pointed out in its Initial Brief (p. 78), the Commission, in Docket 99-0511, expressly agreed with SBC Illinois' position in this regard:

> As discussed by Ameritech, delineating specific UNEs involves a dedicated process geared toward satisfying the requirements of TA96. The record in this case is devoid of the appropriate inquiry. As a result, the Commission will not and cannot broaden or modify the list of UNEs.

*Order*, Docket 99-0511, pp. 125-26 (March 27, 2002), modified in part, *Second Notice Order* (Jan. 23, 2003). In reaching this and other conclusions in Docket 99-0511, the Commission expressly took into account the provisions of Section 13-801. *Order,* Docket 99-0511 at 1. Accordingly, AT&T's argument that SBC Illinois' unbundling and combining obligations extend to any and all network elements, without regard to whether they meet the tests for unbundling under the 1996 Act, has already been rejected by the Commission and should be rejected again.

**UNE:**

**ISSUE 2: Should the ICA definition of telecommunications services be as stated in the Public Utilities Act, or in the FCC Act?**

**Section 9.1.1**

**SBC Illinois Testimony: Niziolek Direct, lines 198-218; Niziolek Rebuttal, lines 76-83.**

**SBC Illinois' Initial Brief: p. 81.**

In support of AT&T's position that the term "telecommunication service" should be defined solely by reference to Section 13-203 of the PUA, without reference to federal law, Staff asserts that the definition "has never been held by any orders, rules and regulations to be inconsistent with the federal definition of the term in the Telecommunications Act of 1996 even though it may in fact be a broader definition than the federal definition." Staff Br. 49. SBC Illinois, however, has not argued that the Section 13-203 definition of "telecommunications service" is *per se* inconsistent with federal law. Rather, as discussed in its Initial Brief (p. 81), SBC Illinois' position is that, to the extent that the definition of "telecommunications service" in Section 13-203, when used in the context of SBC Illinois' obligation to provide AT&T with access to UNEs under Article 9, would create a contractual obligation to provide UNEs that exceeds the obligation based on the definition of "telecommunications services" in Section 3(46) of the federal Act, such contractual obligation would be inconsistent with Section 251(c)(3) of the 1996 Act.

To avoid the potential for such inconsistency, the Commission should approve SBC Illinois' proposed version of section 9.1.1, which states as follows:

> A "telecommunications service" as used in this Agreement, shall be defined as set forth in the Telecommunications Act of 1996 and, to the extent not inconsistent with the Act, applicable state statute.

The reference to "applicable state statute" includes Section 13-203 of the PUA. Accordingly, if, as Staff asserts (Br. 50), use of the Section 13-203 definition does not "impose on SBC

requirements beyond those to which SBC is already subject under state and federal rules and regulations," SBC Illinois' proposed language for section 9.1.1 allows for the applicability of that definition.

**UNE:**

**ISSUE 3: Must AT&T utilize UNEs for the provision of local exchange service to end users in order to utilize UNEs for the provision of other services?**

**Section 9.1.2**

**SBC Illinois Testimony: Niziolek Direct, lines 220-237; Niziolek Rebuttal, lines 95-224.**

**SBC Illinois' Initial Brief: pp. 82-85.**

Staff and AT&T continue to propose language suggesting that the local use requirements established by the FCC's *Supplemental Order Clarification* apply only "in situations where AT&T is not collocated." Staff Br. 52; AT&T Br. 91. This suggestion is flat wrong. The *Supplemental Order Clarification* provides that a carrier may not use a UNE loop-transport combination to provide exchange access to a customer, unless the carrier certifies that it provides a "significant amount of local exchange service to such customer" in accordance with one of three defined local usage tests. There is no exception for carriers that are collocated. To the contrary, local use tests 1 and 2 both provide that "[t]he loop-transport combinations must terminate at the requesting carrier's *collocation* arrangement in at least one incumbent LEC central office." *Supplemental Order Clarification*, CC Docket 96-98, FCC 00-0838, ¶ 22(1), (2) (rel. June 2, 2000) (emphasis added). Thus, to request a UNE combination for use in providing exchange access, AT&T must certify that it provides a significant amount of local exchange service to its end user customers, whether or not AT&T is collocated.

AT&T also continues to argue that the FCC's local use criteria apply only to loop-transport combinations used solely to "bypass special access service." AT&T Br. 91. In fact, the local use restrictions apply generally to requests for UNE loop-transport combinations used in the "exchange access market" of which the "special access market" is a "subset." *Supplemental*

*Order Clarification*, ¶¶ 3, 10, 13 et seq.[6] Thus, for example, one of the factors central to the FCC's imposition of the local use restrictions was a recognition that there is insufficient evidence to conclude that denying CLECs access to unbundled loop and dedicated transport elements will "impair" their ability to compete in the "exchange market" (as opposed to the "local exchange market"). *Id*., ¶ 16.

For these reasons, and the other reasons fully discussed in SBC Illinois' Initial Brief (pp. 82-85), the Commission should either adopt SBC Illinois' proposed version of section 9.1.2 or, in the alternative, adopt Staff's proposed language, modified to read as follows:

> SBC Illinois shall also provide AT&T with Combinations of Unbundled Network Elements that it "ordinarily combines" for itself pursuant to Section 9.3 herein. SBC Illinois shall not place any restrictions or limitations on AT&T's use of Network Elements or Unbundled Network Elements or Combinations of Unbundled Network Elements other than as set forth in this Agreement and other than those restrictions and limitations provided for by the Federal Telecommunications Act, the rules and regulations of the Federal Communications Commission and the Illinois Public Utilities Act and applicable state laws, rules, order and regulations. AT&T may not use Combinations of network elements to provide exchange access service to a customer unless it provides a "significant amount of local exchange service" to such customer in accordance with the requirements and definitions contained in paragraph 22 of the FCC's *Supplemental Order Clarification* in CC Docket 96-98, FCC 00-0183.[7]

[6] Under the 1996 Act, the term "exchange access" is defined broadly to mean "the offering of access to telephone exchange services or facilities for the purpose of origination or termination of telephone toll services," where "toll services means 'telephone service between stations for which there is a separate change not included in contracts with subscribers for exchange service." 47 U.S.C. §§ 153(16), (48). Reading these two definitions together, "exchange access services" includes any services provided between exchange areas.

[7] At page 90 of its brief, AT&T incorrectly quotes what it purports to be agreed language for section 9.1.2. In fact, the relevant agreed language for section 9.1.2, with the words omitted from AT&T's brief underlined, states that SBC Illinois shall not place limitations on AT&T's use of UNEs or UNE combinations "other than as set forth in this Agreement and other than those restrictions and limitations provided for <u>by the Federal Telecommunications Act, the rules and regulations of the Federal Communications Commission and</u> the Illinois Public Utilities Act and applicable state laws, rules, orders and regulations." (See AT&T Arbitration Petition, Appendix C, Article 9, Section 9.1.2).

**UNE:**
**ISSUE 4: May AT&T use UNEs to provide service to itself and its affiliates?**

**Sections 9.2.4 and 9.3.2.5**

**SBC Illinois Testimony: Niziolek Direct, lines 239-258.**

**SBC Illinois' Initial Brief: pp. 86-87.**

In sections 9.2.4 and 9.3.2.5, AT&T proposes language that would expressly allow AT&T to use UNEs and UNE combinations to provide service to itself and its affiliates, in addition to end users. For the reasons discussed in SBC Illinois' Initial Brief (p. 86), AT&T's proposal should be rejected. Under the provisions of the 1996 Act, AT&T may only use UNEs to provide telecommunications services to the "public" (i.e., its end users), and not to itself or its affiliates.

AT&T argues that the Commission, in Docket 01-0614, "rejected the notion that a CLEC could only use UNEs to provide service to end users." AT&T Br. 92. AT&T has mischaracterized the holding in Docket 01-0614. It is true that the Commission interpreted Section 13-801(d)(4) to allow a CLEC purchasing a network elements platform (which is a network elements combination used to provide end-to-end service) to resell the intraLATA toll portion of its network elements platform to an interexchange carrier ("IXC") for the IXC's use in providing service to end users. The Commission did not, however, rule as a general proposition that a CLEC may resell any UNEs or UNE combinations that it purchases from SBC Illinois. To the contrary, the Commission expressly declined to rule that CLECs may resell EELs (loop-dedicated transport combinations), concluding that "at this time, CLECs purchasing EELs may not resell them, but must use them to provide service to CLEC end users or pay telephone providers, no matter how the EEL is purchased." *Order*, Docket 01-0614, par. 608 (June 11, 2003).

Moreover, even in the specific context of the "intraLATA toll portion" of a "network elements platform," the Commission relied on the assumption that the platform would be used for the ultimate provision of service to "end users." Accordingly, there is nothing in the Order in Docket 01-0614 that supports the proposition that AT&T should be allowed to use UNEs to provide telecommunications service to either itself or to an affiliate which is not providing interexchange service to end users.

Accordingly, the Order in Docket 01-0614 does not support AT&T's position that it should have a general right to use UNEs and UNE combinations to provide service to itself and its affiliates. Therefore, AT&T's proposed language for sections 9.2.4 and 9.3.2.5 should be rejected.

It should be noted that rejection of AT&T's proposed language for sections 9.2.4 and 9.3.2.5 will not deprive AT&T of its right to use the network elements platform in the manner authorized in Docket 01-0614. To the contrary, in section 9.3.1, SBC Illinois has agreed that AT&T may use the network elements platform in accordance with "Section 13-801(d)(4) of the Illinois Public Utilities Act and all Illinois Commerce Commission rules and orders interpreting Section 13-801(d)(4)." The orders referred to in this section include the Order in Docket 01-0614. Accordingly, AT&T's ability to "resell" the intraLATA toll portion of the network elements platform to an IXC for use by the IXC to provide service to end users, as contemplated by the Order in Docket 01-0614, is not at issue in this arbitration.[8]

[8] SBC Illinois has challenged the validity of Section 13-801(d)(4), as interpreted by the Commission in federal court and reserves the right to invoke the change of law provision if it prevails.

**UNE:**

**ISSUE 5: Is AT&T entitled to interconnect at any technically feasible point? Is SBC required to physically cross connect AT&T's facilities with SBC Illinois' network?**

**Sections 9.2.5 (AT&T), 9.11, 9.13-9.16 (SBC)**

**SBC Illinois Testimony: Niziolek Direct, lines 260-402; Jarmon Direct, lines 27-163.**

**SBC Illinois' Initial Brief: pp. 88-92.**

As discussed in SBC Illinois' Initial Brief (pp. 88-89), there are three issues here:

(1) whether the Commission should approve the SBC Illinois version of section 9.11, which describes the methods by which AT&T may obtain access to UNEs and the terms and conditions applicable to each method;

(2) whether the Commission should approve SBC Illinois' proposed sections 9.13-9.16, which describe the cross connects available to AT&T; and

(3) whether the Commission should approve AT&T's proposed section 9.3.5, which suggests that AT&T would have the unilateral right to require SBC Illinois to provide AT&T with access to UNEs at non-standard demarcation points deemed "suitable" by AT&T.

In its brief, AT&T addresses only the first issue and part of the second issue, as described above. With respect to those issues, AT&T simply repeats the bald and unsubstantiated assertion of its witness, Mr. Noorani, that SBC Illinois' proposed language for sections 9.11 and 9.1.3 "limits the options available to AT&T." As discussed in SBC Illinois' Initial Brief (p. 90), this assertion is without merit because (i) despite opportunities to do so, AT&T has never identified any technically feasible alternatives to the methods of access and cross-connections described in SBC Illinois' proposed contract language; and (ii) if AT&T ever were able to identify technically feasible alternatives, it would be able to request those alternatives through the BFR process. For these and other reasons discussed in the direct testimony of Ms. Niziolek (lines 286-387) and summarized in SBC Illinois' Initial Brief (pp. 89-91), the Commission should approve SBC Illinois' proposed language for sections 9.11 and 9.13-16, and reject AT&T's proposed language

for section 9.11. In its brief, AT&T did not address, much less refute, Ms. Niziolek's testimony on this issue.

AT&T presents no argument whatsoever with respect to the third issue described above, i.e., whether the Commission should approve AT&T's proposed language for section 9.2.5. For the reasons fully discussed at pages 91 to 92 of SBC Illinois' Brief, that language should be rejected because it would improperly give AT&T the unilateral right to demand access to UNEs at any demarcation points it deems to be "suitable," without regard to technical feasibility or impacts on network reliability.

Rather that address the real issues in dispute, AT&T argues that SBC Illinois has a "duty to provide interconnection at any technically feasible point within the requesting carrier's network," citing Sections 13-801(a) and 13-801(b)(1)(B) of the PUA. AT&T Br. 93. As discussed in SBC Illinois' Initial Brief (p. 88), however, UNE Issue 5 is not really about "interconnection" which, as that term is used in Sections 13-801(a) and 13-801(b)(1)(B), does not involve access to UNEs. Rather, "interconnection" refers to the "linking of two networks for the mutual exchange of traffic." (47 C.F.R. Section 51.5). AT&T also cites Section 13-801(d) as support for the general requirement that SBC Illinois provide AT&T with non-discriminatory access to UNEs at any technically feasible point. There is, however, no dispute with respect to this general requirement, as reflected in the agreed-upon portions of section 9.11.

**UNE:**

**ISSUE 6: Should SBC be obligated to provide AT&T, in connection with an order for a UNE or UNE Combination, with any technically feasible network interface as described in industry standard technical references?**

**Sections 9.2.3 (AT&T), 9.2.5 (SBC)**

**SBC Illinois Testimony: Niziolek Direct, lines 404-447; Jarmon Direct, lines 164-211.**

**SBC Illinois' Initial Brief: pp. 93-95.**

For the reasons discussed in SBC Illinois' Initial Brief (pp. 93-95), AT&T's proposed language for section 9.2.3, which would give AT&T the right to "designate any technically feasible interface, without limitation," should be rejected because it is extremely broad and could be construed as requiring SBC Illinois to construct or deploy on AT&T's demand new facilities and additional types of technology that do not currently exist in SBC Illinois' network. AT&T does not dispute SBC Illinois' interpretation of AT&T's proposed language. Nor does AT&T challenge SBC Illinois' position that, as so interpreted, AT&T's proposed section 9.2.3 would violate the 1996 Act, which "requires unbundled access only to an incumbent LEC's existing network – not to a yet unbuilt superior one." *Iowa Utilities Board v. FCC*, 120 F.2d 753, 813 (8th Cir. 1997) (invalidating FCC rules requiring ILECs to provide CLECs with access to unbundled network elements at levels of quality superior to those at which the ILECs provide those services to themselves) (emphasis in original); *Iowa Utilities Board v. FCC*, 219 F.3d 744, 757-58 (8th Cir. 2000).[9] Accordingly, AT&T's proposed language for section 9.2.3 must be rejected.

[9] AT&T does cite Section 13-801(d) of the PUA in support of its proposed language. Section 13-801(d) does not, however, require SBC Illinois to construct a "superior network" at the request of a CLEC. In accordance with Section 13-801(a), Section 13-801(d) should be construed in a manner consistent with the 1996 Act which, as discussed above, does not require ILECs to create new facilities upon demand.

AT&T's only argument is that SBC Illinois' proposal improperly restricts the network interface available to AT&T. AT&T Br. at 96. This argument is without merit. As SBC Illinois has pointed out, AT&T has the option under SBC Illinois' proposal to request additional interfaces that are not ordinarily used by SBC Illinois through the BFR process. SBC. Ill. Br. 94-95. SBC Illinois' proposal permits the parties to discuss a specific request in light of the factual situation existing at the time the request is made. *Id.*

**UNE:**

**ISSUE 7: What criteria should be used to determine whether network elements or unbundled network elements are "available"?**

**Section 9.2.5.1**

**SBC Illinois Testimony: Niziolek Direct, lines 449-489; Niziolek Rebuttal, lines 85-91.**

**SBC Illinois' Initial Brief: pp. 96-98.**

AT&T asserts that "SBC contends that whether a UNE is available shall be determined in accordance with federal law without regard to this Commission's previous orders." AT&T Br. at 97. AT&T has mischaracterized SBC Illinois' position, which is that "availability" should be determined by reference to federal law and FCC rulings, as well as rulings of the Commission. Specifically, SBC Illinois' proposed language for this issue, which is included in section 9.2.5.1, states as follows:

> Whether or not facilities or equipment are "available" will be determined pursuant to applicable federal law and FCC regulations and, where consistent with federal law and FCC regulations, Commission rulings and applicable state law.

(Emphasis added).

As discussed in SBC Illinois' Initial Brief (pp. 96-98), the reference to "Commission rulings" in the above-quoted language includes the Order in Docket 99-0593. Accordingly, SBC Illinois' proposed language would be deemed to incorporate the definition of "availability" adopted in the Order in Docket 99-0593 (as clarified by the Commission in its brief responding to SBC Illinois' court challenge to that Order) unless and until the courts or FCC take action in the future to adopt a definition of "availability" which is inconsistent with the definition adopted in Docket 99-0593.

Contrary to Staff's assertion (Br. 52), it is not the specific reference to Docket 99-0593 in AT&T's proposed language for section 9.2.5.1 to which SBC Illinois objects; rather, SBC

Illinois' objection is to the lack of any reference in AT&T's proposed language to the need for consistency with federal law. In support of AT&T's language, Staff argues that, if the Order in Docket 99-0593 is "modified or vacated by an appellate court, either party can pursue charges to the contract through the contractual change in law provisions." Staff Br. 53. Staff, however, does not explain why the adoption of language that would create the potential need for a party to invoke the change of law provision, with its attendant delay and administrative burdens, is preferable to language, such as that proposed by SBC Illinois, which would automatically incorporate by reference a definition of "available" determined by reference to federal law and the FCC's rulings if the Order in Docket 99-0593 is overturned.

Finally, Staff proposes, "for clarity," that AT&T's proposed language for section 9.2.5.1 referring to the Order in Docket 99-0593 be revised to incorporate the "specific language ordered by that docket by the Commission." Staff Br. 53. To avoid unnecessary disputes regarding the meaning of section 9.2.5.1 in the event the Commission deems it appropriate to adopt AT&T's proposed version of that section, as modified by Staff, the section should be further modified to incorporate the clarification made by the Commission in its brief on appeal in Case No. 00 C 7050, as follows:

> 9.2.5.1 (con't.) A facility is available if it is located in an area presently served by SBC Illinois and otherwise meets the criteria established by the Illinois Commerce Commission in ICC Docket No. 99-0593. <u>This definition of "available" does not require SBC Illinois to construct network elements for the sole purpose of unbundling those elements for CLECs</u>.

Niziolek Direct lines 472-481.

**UNE:**

**ISSUE 8.a:** **When SBC services are converted to UNE combinations, must SBC guarantee that service to the end user will never be disconnected during conversion?**

**ISSUE 8.b:** **What charges may SBC recover for such a conversion?**

**Sections 9.3.1.2 (AT&T), 9.3.2.1(SBC)**

**SBC Illinois Testimony: Chapman Direct, lines 1127-1490; Niziolek Direct, lines 491-569; Jarmon Direct, lines 213-277.**

**SBC Illinois' Initial Brief: pp. 99-102.**

AT&T asserts that "SBC Illinois refuses to agree that it cannot put customers out of service when migrating them from SBC Illinois retail to service from AT&T using the UNE-P." AT&T Br. 99. This is a gross mischaracterization of SBC Illinois' position. As Ms. Niziolek testified, SBC Illinois agrees that it will not disconnect or separate UNEs that are already combined when it is requested to migrate a customer over a UNE-Platform, and further agrees that there should be no disruption to the customer's services as a result of such a migration. Niziolek Direct lines 506-509; SBC Br. 99-100. There are, however, activities that can occur during UNE-P migrations, such as the reassignment of ports and switch translations, that may cause momentary service "disruptions" which are generally unnoticeable to customers. Niziolek Direct lines 521-525; Jarmon Direct lines 273-277; SBC Ill. Br. 100. It is unreasonable to require SBC Illinois to guarantee that such momentary "disruptions" will never occur.

In support of its position, AT&T asserts that, in Docket 01-0614, the Commission "concluded that when the end user customer being migrated has an existing high-speed connection provided over the access line via a splitter, the requesting carrier seeking to serve the customer is entitled to use the existing splitter because that is the only way to ensure that the end user's features remain intact." AT&T Br. 100. AT&T, however, fails to explain what this aspect

of the Commission's decision in Docket 01-0614 has to do with UNE Issue 8 or how it supports the adoption of AT&T's proposed contract language.

As discussed more fully in the portion of this reply brief that addressed UNE Issue 13, the scenario being addressed in the portion of the Order in Docket 01-0614 referred to by AT&T is one involving a line sharing arrangement in which the splitter is provided by SBC Illinois. *Order,* Docket 01-0614, ¶ 74 (June 11, 2002). In section 9.2.2.1 of Schedule 9.2.2 of the Agreement, however, AT&T has agreed that SBC Illinois is not obligated to provided splitters for line sharing or line splitting. Niziolek Direct lines 819-821. Accordingly, the scenario addressed in Docket 01-0614 (i.e., migration of a customer to AT&T over a network elements platform including an SBC Illinois-owned splitter) is not one that will exist under this Agreement.

AT&T also asserts, for the first time in this proceeding, that SBC Illinois has "refused" to allow an end user being migrated to AT&T over the UNE-P to "keep his/her voice mail". AT&T Br. 99. The Commission, however, has rejected proposals that SBC Illinois be required to provide voice mail and other non-regulated service as part of the UNE-P. *Order,* Docket 98-0396, p. 95 (Oct. 16, 2001); *Order on Reopening,* Docket 98-0396, p. 11 (April 30, 2002).

**UNE:**

**ISSUE 9.a:** **May AT&T combine UNEs with other services (including access services) obtained from SBC Illinois?**

**ISSUE 9.b:** **May AT&T combine network elements made available by SBC Illinois with other SBC Illinois provided Network Elements?**

**Section 9.3.2.5**

**SBC Illinois Testimony: Niziolek Direct, lines 571-614; Niziolek Rebuttal, lines 227-278.**

**SBC Illinois' Initial Brief: pp. 103-104.**

SBC Illinois' Initial Brief on this issue fully addresses all of the arguments in the Initial Briefs of AT&T and Staff that warrant response.

**UNE:**

**ISSUE 10: Should the ICA contain the limitations on an ILEC's obligation to combine which are set forth in *Verizon Comm. Inc.*?**

**Sections 9.3.3, 9.3.3.9 and 9.3.3.11**

**SBC Illinois Testimony: Niziolek Direct, lines 616-633; Niziolek Rebuttal, lines 280-319.**

**SBC Illinois' Initial Brief: pp. 105-110.**

AT&T's position on this issue relies heavily on Illinois law. SBC Illinois does not dispute the relevance of Illinois law. The Agreement, however, in addition to requiring SBC Illinois to provide UNE combinations that are required by Illinois law, also requires SBC Illinois to provide UNE combinations that are not required by Illinois law, namely (as we explain below) combinations that are not ordinarily combined. Accordingly, the Commission should first consider the impact of the *Verizon* limitations without regard to Illinois law, and then separately consider the effect of Illinois law – which of course pertains only to those combinations that are required by Illinois law. That is the approach we take here.

For all of AT&T's huffing and puffing about "fabricated 'limitations'" (AT&T Br. 106) and "meaning that SBC has attributed to the *Verizon* decision" (*id*. 110), there is no question but that the Supreme Court did in *Verizon* recognize limitations on incumbent LECs' duty to combine unbundled network elements under the FCC's rules, and there is no serious question about what those limitations are. Indeed, AT&T's attempt to dispute the *Verizon* limitations has already been rejected by a federal court in Indiana. *See* SBC Br. 106-107. In *Indiana Bell Tel. Co. v. McCarty*, 2002 U.S. Dist. LEXIS 24071 (S.D. Ind. Dec. 13, 2002), the court stated as follows:

> [SBC] is correct that it must not be made to offer new UNE combinations under all circumstances. *See* [*Verizon*], 122 S.Ct. at 1685 ("The duties imposed under the [combining] rules are subject to restrictions limiting the burdens placed on the incumbents."). First, an ILEC must combine elements for a CLEC only when the CLEC is unable to do the combining itself. *Id*. Second, the ILEC must provide only the "functions necessary

> to combine" the elements, not necessarily the actual, complete combination. *Id.* . . . Third, the CLEC must pay a reasonable fee for the combination. *Id*. Finally, the ILEC's duty to provide new UNE combinations arises only when the requested combinations will not discriminate against other carriers and are "technically feasible." *Id.* . . .
>
> . . . . While the agreement complies with the Act by requiring [SBC] to provide AT&T new UNE combinations, the agreement does not reflect the limitations on Ameritech's duty as recently set forth by the Supreme Court. In that sense, the agreement is not consistent with the Act.

*Id.* at *10-11.

AT&T's argument is plausible only if one wears blinders when reading *Verizon*. It is correct, as AT&T asserts, that *Verizon* reinstated 47 C.F.R. § 315(c). And it is correct, as AT&T also asserts, that the text of Rule 315(c) does not set forth the *Verizon* limitations. But the conclusion that AT&T draws from these two premises – that there are no *Verizon* limitations – is plainly wrong. What AT&T ignores, and asks the Commission to ignore, is that the Supreme Court interpreted Rule 315(c) to impose combining requirements on incumbent LECs only subject to the limitations identified by the Court. That is the only possible meaning of the Supreme Court's statement that, "[T]he duties imposed under the [FCC's] rules are subject to restrictions limiting the burdens placed on the incumbents." 535 U.S. at 535.

AT&T writes page after page about why there *should be* no such restrictions (AT&T Br. 111-114), but all that amounts to is a treatise on why, in AT&T's view, the Supreme Court was wrong. With all respect, this Commission cannot reverse the United States Supreme Court.

AT&T also misses the boat when it challenges SBC Illinois' proposed language as "vague and broadly worded." AT&T Br. 111. As SBC Illinois showed in its initial brief (at 105-106; 107-108), most of SBC Illinois' proposed language recites the *Verizon* limitations verbatim.

Thus, to the extent that the Agreement requires SBC Illinois to provide UNE combinations that are not required by Illinois law, *i.e.*, combinations that are required only by

FCC Rule 315(c), the Agreement must qualify that requirement with the limiting language SBC Illinois has proposed. As Section 13-801(d)(3) of the Illinois Public Utilities Act provides, and as AT&T acknowledges (AT&T Br. 110), the only UNE combinations that Illinois law requires SBC Illinois to provide are those that are "ordinarily combined."[10] Thus, the *Verizon* limitations indisputably apply to combinations that are not ordinarily combined, and the Agreement therefore must include the *Verizon* limitations at least with respect to such combinations.[11]

The next question is whether the *Verizon* limitations should apply to combinations that SBC Illinois is obliged to provide under Illinois law, *i.e.*, combinations of elements that SBC Illinois ordinarily combines for itself. The answer is that they should.

The combining requirement in PUA section 13-801(d)(3) must be interpreted and applied in a manner that is consistent with federal law. *See* section 13-801(a) ("This section provides additional State requirements contemplated by, but not inconsistent with, Section 261(c) of the federal Telecommunications Act of 1996 . . . and not preempted by orders of the Federal Communications Commission"). To interpret and apply section 13-801(d)(3) in a manner that is consistent with federal law, it must be interpreted as subject to the *Verizon* limitations.

To be sure, Section 13-801(d)(3) does not recite the *Verizon* limitations, but that is no reason for the Commission to rule that those limitations do not apply. The statute (just like FCC Rule 315(c)) sets forth the combining requirement in general terms, and therefore has needed, and received, fleshing out by the Commission (just as FCC Rule 315(c) received fleshing out by the Supreme Court). For example, the statute, while requiring ILECs to combine elements that

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[10] Section 801(d)(3) requires SBC Illinois to "combine any sequence of unbundled network elements that it ordinarily combines for itself."

[11] Staff discusses UNE Issue 17 without regard to state law considerations and recommends adoption of AT&T's proposed language. Staff Br. 56. We fully addressed Staff's argument in our initial brief, at pages 108-110.

they "ordinarily combine," does not say what "ordinarily combines" means. Accordingly, the Commission was required to provide a definition for that term, and it did so in its June 11, 2002,Order in Docket No. 01-0614, at ¶¶165-168. Similarly, the Commission should now determine that in order for Section 13-801(d)(3) to be applied in a manner consistent with federal law, the state combining requirement is subject to the same limitations as the federal combining requirement.

AT&T points out that the Commission's Order in 01-0614 does not reflect the *Verizon* limitations, but that is hardly surprising. The *Verizon* decision was issued only days before the Commission's Order, and was not the focus of the briefing in 01-0614. As a result, this arbitration presents the first meaningful opportunity for the Commission to consider whether the *Verizon* limitations apply to the provision of UNE combinations under section 13-801(d)(3), and the Commission should hold that they do, for the reasons set forth above.

**UNE:**

**ISSUE 11.a:** **Should the ICA contain language specifically obligating AT&T to follow the FCC's Supplemental Order Clarification when utilizing EELs or does the Parties agreed to language in Section 9.1.1 adequately describe AT&T's obligation?**

**ISSUE 11.b:** **Is SBC Illinois required to combine UNEs with non-251(c)(3) offerings?**

**Sections 9.3.3 and 9.3.3.14**

**SBC Illinois Testimony: Niziolek Direct, lines 635-659; Niziolek Rebuttal, lines 321-369.**

**SBC Illinois' Initial Brief: pp. 111-113.**

SBC Illinois' Initial Brief on this issue fully addresses all of the arguments in the Initial Briefs of AT&T and Staff that warrant responses.

**UNE:**

**ISSUE 12: Is SBC entitled to compensation for work performed to combine UNEs as set forth in *Verizon Comm. Inc.*?**

**Sections 9.3.3.8 and 9.3.3.12**

**SBC Illinois Testimony: Niziolek Direct, lines 661-692; Niziolek Rebuttal, lines 397-420.**

**SBC Illinois' Initial Brief: pp. 114-116.**

In opposing SBC Illinois' proposed sections 9.3.3.8 and 9.2.2.12, AT&T reiterates the assertion of its witness, Mr. Noorani, that SBC Illinois seeks to obtain "double recovery" of costs "because time and material charges are already reflected in the nonrecurring charges for each element." AT&T Br. 117. As SBC Illinois witness Niziolek explained in her direct testimony, however, sections 9.3.3.8 and 9.3.3.12 are applicable to UNEs and UNE combinations provided through BFR and BFR-OC processes and for which rates are not listed in the pricing schedule. Accordingly, SBC Illinois' proposal will not lead to "double recovery of costs." Niziolek Direct lines 671-676; SBC Ill. Br. 114-115. AT&T's brief completely disregards Ms. Niziolek's testimony.

AT&T cites the Commission's Order in Docket 01-0614 for the proposition that "SBC Illinois' options for recurring and non-recurring charges for UNEs are limited to the applicable 'Commission-approved' rates." AT&T Br. 118. In the portion of the Order cited by AT&T, however, the Commission was approving tariff language governing the rates applicable to the specific UNE combinations listed in the UNE-P and EEL tariffs. The Order in Docket 01-0614 did not hold that Commission preapproval of rates is required for a UNE combination provided pursuant to the BFR-OC process if the combination is one for which applicable rates have not been established.

AT&T also argues that SBC Illinois may "charge no more for combinations of UNEs than the TELRIC costs of the combinations." AT&T Br. 118. SBC Illinois, however, does not

take issue with this proposition and, in fact, agreed to modify the language of section 9.3.3.8 to make it clear that the fees for combining work must be "TELRIC based." Niziolek Direct lines 410-411; SBC Ill. Br. 115. AT&T has failed to identify any valid reason to reject SBC Illinois' proposal, as modified.

Staff continues to propose that section 9.3.3.8 be revised to refer to combining work that is required to be performed by SBC Illinois pursuant to a BFR or BFR-OC "as set forth in SBC-Ameritech's tariff Ill.C.C. No. 20, Part 19, Section 1," rather than combining work required pursuant to a BFR or BFR-OC "under Schedule 2.2 of this Agreement." In support of this proposal, Staff asserts that the BFR-OC process, as described in the Company's tariff, "should be implemented in this interconnection agreement" because it was "reviewed and approved" by the Commission in Docket 01-0614.

Staff's argument is without merit. The provision of the Agreement which governs the processes to be used by AT&T to request UNE combinations not specifically listed in the Agreement is section 9.3.2.4, which states as follows:

> If AT&T requests a combination of network elements that are not ordinarily combined, AT&T shall submit a BFR, as set forth in Schedule 2.2. If AT&T requests a combination of network elements that are ordinarily combined, but not included on Table 1, AT&T shall submit a BFR-OC, as set forth in Schedule 2.2.

AT&T Arbitration Petition, Appendix C, Article 9, Section 9.3.2.4. This is agreed language that is not at issue in this arbitration. Indeed, Staff did not oppose section 9.3.2.4, nor did it present any evidence that would support its rejection. In fact, the language of the terms and conditions governing the BFR-OC process as set forth in Schedule 2.2 is virtually identical to the language of the BFR-OC terms and conditions set forth in SBC Illinois' tariff.

Given the fact that the BFR and BFR-OC processes applicable to the Agreement are as set forth in Schedule 2.2, it makes no sense to include in section 9.3.3.8 a reference to the Company's tariff, rather than a reference to Schedule 2.2.

**UNE:**

**ISSUE 13: Should the ICA should contain terms and conditions relative to "pre-existing" and new combinations as proposed by SBC Illinois?**

**Section 9.3.3.1, 9.3.3.2**

**SBC Illinois Testimony: Chapman Direct, lines 1127-1490; Niziolek Direct, lines 694-860.**

**SBC Illinois' Initial Brief: pp. 117-120.**

AT&T continues to complain about SBC Illinois' "attempt to draw a distinction between pre-existing combinations and new combinations." AT&T Br. 118, 120. As discussed in SBC Illinois' Initial Brief (pp. 117-118), however, such a distinction (i) has been approved by the Commission; (ii) is reflected in the Company's UNE-P tariff; (iii) is supported by Staff; and (iv) was agreed to by AT&T, as reflected in the agreed language for section 9.3.1. Moreover, AT&T has failed to identify a valid concern with respect to any specific portions of the definition of "pre-existing combination" as set forth in SBC Illinois' proposed section 9.3.3.1.

The *only* portion of the language of section 9.3.3.1 about which AT&T makes any specific arguments is subsection 9.3.3.1(2)(d), which provides that a pre-existing UNE-P combination does not include a situation in which, at the time of the Order, the end user customer in question is "served by a line sharing arrangement" or "the technical equivalent, e.g., the loop facility is being used to provide both a voice service and an xDSL service." AT&T's objection to this language is unwarranted. As discussed in the Company's Initial Brief (pp. 119-120), AT&T has agreed in section 9.2.2.1.1 of Schedule 9.2.2 that SBC Illinois has no obligation to provide AT&T with a line splitter for purposes of line sharing or line splitting. AT&T Arbitration Petition, Appendix C, Sch. 9.2.2. Accordingly, any line sharing or line splitting arrangement involving AT&T would of necessity involve situations in which a splitter is provided by an entity other than SBC Illinois, and, therefore, the combining would take place outside of SBC Illinois' network. Accordingly, under the Agreement, a line sharing or line

splitting arrangement cannot, by definition, be considered a pre-existing combination of SBC Illinois-provided network elements. Niziolek Direct lines 814-827; Chapman Direct lines 1219-1236.

AT&T's arguments regarding line splitting are nothing more than a repeat of the testimony of its witness, Mr. Noorani, which in turn was a rehash of the arguments that AT&T made, and the Commission rejected, in SBC Illinois' 271 proceeding, Docket 01-0662, where the Commission expressly approved SBC Illinois' "process for the conversion of UNE-P to line splitting." *Phase II Order*, Docket 01-0662, ¶ 1723 (May 13, 2003); (see SBC Ill. Br. 101-102). As discussed in SBC Illinois' Initial Brief (pp. 101-102), Mr. Noorani's arguments were also thoroughly refuted in the direct testimony of SBC Illinois Chapman. AT&T, however, has chosen to say nothing in response to Ms. Chapman's testimony. Accordingly, the Commission should rule in favor of SBC Illinois in this case, just as it did in Docket 01-0662.

AT&T argues that SBC Illinois' position is inconsistent with paragraph 19 of the FCC's *Line Sharing Reconsideration Order*[12], which AT&T quotes as requiring an ILEC to "permit competing carriers to engage in line splitting using the UNE-platform where the competing carrier purchases the entire loop and provides its own splitter" (emphasis in AT&T's brief). AT&T Br. 123. AT&T, however, conveniently neglected to quote the language from paragraph 19 of the *Line Sharing Reconsideration Order* that immediately follows the sentence quoted by AT&T. The full paragraph states as follows:

> Thus, as AT&T and WorldCom contend, incumbent LECs have an obligation to permit competing carriers to engage in line splitting using the UNE-platform where the competing carrier purchases the entire loop and provides its own

[12] *Deployment of Wireline Services Offering Advanced Telecommunications Capability, Third Report and Order on Reconsideration*, CC Docket No. 98-147 (Released January 19, 2001).

> splitter.[13] For instance, if a competing carrier is providing voice service using the UNE-platform, it can order an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment and unbundled switching combined with shared transport, ***to replace*** its existing UNE-platform arrangement with a configuration that allows provisioning of both data and voice services.[14] As we described in the *Texas 271 Order*, in this situation, the incumbent must provide the loop that was part of the existing UNE-platform as the unbundled xDSL-capable loop, unless the loop that was used for the UNE-platform is not capable of providing xDSL service.[15] (emphasis added)

*Line Sharing Reconsideration Order*, ¶ 19. Thus, the FCC clearly describes line splitting in exactly the same manner as supported by SBC Illinois, i.e., that, in order to engage in line splitting, CLECs utilizing the UNE-P must *replace* an existing UNE-P with a DSL-capable loop terminated to a DSLAM and unbundled switching with transport.

Contrary to AT&T's assertion (AT&T Br. 123), the FCC's *Texas 271 Order* also supports SBC Illinois' position. In that Order, the FCC states as follows:

> [I]f a competing carrier is providing voice service over the UNE-P, it can order an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment and unbundled switching combined with shared transport to replace its UNE-P with a configuration that allows provisioning of both data and voice service." *Texas 271 Order* at ¶ 325 (emphasis added).

SBC Texas' UNE offerings in Texas that the FCC discussed and approved in the *Texas 271 Order* are identical to the UNE offerings that SBC Illinois currently makes available to CLECs. Specifically, line splitting *was not* (and could not be made) available over SBC Texas' UNE-P product offering. Rather, CLECs could engage in line splitting using stand-alone unbundled elements in the exact same manner as that described by the FCC and as is currently made

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[13] *See Texas 271 Order*, 15 FCC Rcd at 18515-16, para. 325; *see also Line Sharing Order*, 14 FCC Rcd at 20948, n.163 (contemplating arrangements with two competing carriers providing voice and data service on a single line). [Footnote from original text.]

[14] *Texas 271 Order*, 15 FCC Rcd at 18515-16, para. 325. Similarly, a competing carrier could use unbundled loop and switching elements to provide voice and data service to an end user not already served via the UNE-platform. [Footnote from original text.]

[15] *Texas 271 Order*, 15 FCC Rcd at 18515-16, para. 325. [Footnote from original text.]

available by SBC Illinois. Chapman Direct lines 1366-1380. Furthermore, the FCC also approved SBC Illinois' arrangements for supporting line splitting in Arkansas, Kansas, Missouri, and Oklahoma in its 271 approval Orders for each of those states. *Id*. lines 1212-1214.

AT&T complains that adoption of SBC Illinois' position would result in a "loss of dial tone." AT&T Br. 124. As the FCC Orders discussed above recognize, however, before xDSL service can be provisioned over an unbundled loop and unbundled switch port with transport (or any home-run copper loop/switch port arrangement, for that matter) that is currently being used by a CLEC to provide POTS service, the loop and the port *must* be physically separated in order to place the splitter between the loop and the port. This temporary loss of dial tone is required in either a "line sharing" or a "line splitting" situation, as this Commission recognized in its March 14 Order in Docket No. 00-0393 (at 54). Without the separation of the copper loop and the switch port to insert the splitter, it would be physically impossible for line splitting to take place. It is the laws of physics, and not SBC Illinois' requirements, that result in the brief loss of dial tone. The Commission expressly acknowledged this fact in Docket 00-0393: "Whenever DSL service is added to an existing voice line, the loop and the switch port must be separated (or, as AT&T asserts, "ripped apart") in order to insert the splitter." As the Commission correctly stated, this "simply is a technological fact that cannot be avoided." *Order*, Docket 00-0393, p. 54 (March 14, 2001). Moreover, as Ms. Chapman explained, SBC Illinois manages CLEC orders for line splitting in a manner that ensures that the downtime associated with such orders is minimized, and is similar to that associated with "line sharing" orders requesting the HFPL UNE on an existing SBC Illinois home-run copper loop over which SBC Illinois provides voice service. Chapman Direct lines 1429-1434.

AT&T also asserts that "SBC Illinois' position requires the UNE-P carrier—already providing voice service via the UNE Platform—to order a <u>new</u> loop (even if the loop actually

used is, as is often the case, the existing loop) and a new switch port in every case that line splitting is sought." AT&T Br. 124. This assertion is misleading and does not support AT&T's position. In its *Line Sharing Reconsideration Order*, the FCC stated a CLEC could "order an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment and unbundled switching combined with shared transport, to replace its existing UNE-platform arrangement with a configuration that allows provisioning of both data and voice services." Line *Sharing Reconsideration Order*, ¶ 19. Essentially, the FCC sanctioned replacing the POTS loop that was part of the existing UNE-P with an xDSL-capable loop that would support line splitting. This is exactly what SBC Illinois allows CLECs to do. The FCC also requires ILECs to provide the loop that previously was part of the UNE-P as the unbundled xDSL-capable loop, unless that loop is not capable of providing xDSL service. SBC Illinois complies with this requirement. Chapman Direct lines 1392-1401. There is nothing in the language of SBC Illinois' proposed section 9.3.3.1 (or any other section of the Agreement for that matter) which suggests that SBC Illinois will not support line splitting for AT&T in accordance with these FCC requirements.

AT&T also erroneously claims that a CLEC would not perform the work necessary to combine UNEs in a line splitting arrangement if more than one CLEC were involved. AT&T Br. 127. In fact, SBC Illinois provides separate UNEs to the requesting CLEC when a CLEC (or two cooperating CLECs) choose to engage in line splitting. Those physically separate elements are an unbundled xDSL-capable loop and a separate ULS-ST port. Both are individually terminated to a CLEC's collocation arrangement. Unless one of the CLECs involved in the line splitting arrangement actually combines the elements, the end user will not have voice service. This is a simple fact. If the port is not somehow connected to the loop (through the CLEC's splitter), the end user will not have voice service. It is true that a CLEC could prewire its collocation arrangement so that the combination would occur automatically once SBC Illinois

provided the requested UNEs. However, this does not change the fact that the combination occurs within the CLEC's network. Chapman Direct lines 1449-1460.

AT&T argues that its position is supported by the Order in Docket 01-0614. As discussed in response to AT&T's argument regarding UNE Issue 8, however, that Order dealt with the situation in which a customer being served by a line sharing arrangement using an SBC Illinois-owned splitter requests a change in voice provider from SBC Illinois to a CLEC using the network elements platform. In that situation, the Commission held that the splitter is part of an existing network elements platform used to provide service to the customer and that the splitter should not be removed in migrating the customer to the competitive voice provider over that platform. *Order*, Docket 01-0614, ¶¶ 74-77 (June 11, 2002). As discussed above, however, that situation cannot arise under this Agreement because AT&T has agreed that SBC Illinois has no obligation to provide AT&T with an ILEC-owned splitter, including as part of an existing network elements platform.

The scenario addressed by AT&T in its brief, on the other hand, is one in which AT&T, as a carrier currently providing voice service to a customer using UNE-P, elects to engage in line splitting so that it can provide, either by itself or in a partnering arrangement with a data CLEC, voice and data services. As previously discussed, the Commission in Docket 00-0393 stated that, in that scenario, the existing loop and switch port must be separated in order to insert the splitter. *Order*, Docket 00-0393, ¶ 54 (March 14, 2001). The Commission recently reaffirmed this point in its *Phase II Order* in Illinois' 271 proceeding, Docket 01-0662:

> Scenario A
>
> AI provides voice service but no data service is provided to the customer; the CLEC wins the customer and then orders the line to be converted to UNE-P and connections to a splitter established in order to provide data service. As the Commission found in Docket 00-0393, the loop will need to be disconnected from the switch in order to insert a

splitter. It is assumed that the splitter would be owned by the CLEC, because AI has no obligation to provide splitters to CLECs in this situation.

*Phase II Order*, Docket 01-0662, ¶ 1599 (emphasis added).

For all the reasons discussed, AT&T's arguments regarding line splitting are without merit and do not in any way support the rejection of SBC Illinois' proposed definition of "pre-existing combination" in section 9.3.3.1. For the reasons discussed herein and in SBC Illinois' Initial Brief, that definition is reasonable and should be approved in this case.

**UNE:**

**ISSUE 14:** **Whether the ICA should include language stating that SBC Illinois may reserve the right to incorporate subsequent regulatory, judicial or legislative orders that address UNEs and/or the obligation to provide combinations of UNEs, in addition to the change of law provisions covered in Article 29, section 29.4?**

**Section 9.3.3.2**

**SBC Illinois Testimony: Niziolek Direct, lines 862-872.**

**SBC Illinois' Initial Brief: pp. 121-123.**

Although this issue is framed in general terms, SBC Illinois' proposed language deals with a specific, discrete subject. The Supreme Court has ruled that an incumbent LEC's duty is only to "perform the functions necessary to combine" unbundled network elements, "not necessarily to complete the actual combination." *Verizon Comms. Inc. v. FCC*, 535 U.S. 467 (2002) ("*Verizon*"). SBC Illinois is willing to forego, for now, its right under *Verizon* to insist that it will only "perform the functions necessary to combine" network elements for AT&T, but seeks to reserve its right to do so in the future, when and if legal developments clarify what functions are necessary and what functions are not.

AT&T's first response is to assert that SBC Illinois has misinterpreted *Verizon*, and that *Verizon* "simply reinstated FCC Rule 315(c)" and "did not create or clarify any new rules or distinctions." AT&T Br. 129. The only federal court that has addressed the question held that AT&T is wrong about that. *Indiana Bell Tel. Co. v. McCarty*, 2002 U.S. Dist. LEXIS 24071, *10-11 (S.D. Ind. Dec. 13, 2002) (discussed in SBC Br.at 106-107). This Commission should recognize, as that court did, the limitations the *Verizon* Court imposed on ILECs' duty to combine network elements. It was only with those limitations that the Supreme Court reinstated Rule 315(c).

AT&T next argues that when the law clarifies what functions are and what functions are not necessary for an ILEC to perform, SBC Illinois can assert its rights under the change of law

provisions in the Agreement. AT&T Br. 130. That argument should be rejected, for two reasons. First, AT&T will argue – inevitably and perhaps correctly – that a decision that clarifies the meaning of that limitation does not constitute a change of law.[16] Second, the usual change of law regimen should not apply here, because SBC Illinois is voluntarily foregoing – for now – its right to insist on strict adherence to the *Verizon* limitation. Under that unusual circumstance, SBC Illinois's future exercise of that right should not be subject to the delay inherent in the change of law process.

[16] The inevitability of AT&T's position is underscored by the extremely restrictive language that AT&T is proposing for the change of law provision in GT&C Issue 1.

**UNE:**
**ISSUE 15: Under what circumstances is a CLEC able to combine for itself?**

**Sections 9.3.1.3.6, 9.3.1.3.7, 9.3.2.2, 9.3.3.9.5.3, 9.3.3.10 (and subsections)**

**SBC Illinois Testimony: Niziolek Direct, lines 874-928; Niziolek Rebuttal, lines 371-394; Jarmon Direct, lines 278-301; Jarmon Rebuttal, lines 13-75.**

**SBC Illinois' Initial Brief: pp. 124-126.**

The arguments made by AT&T and Staff with regard to UNE Issue 15 are really arguments that go to UNE Issue 10, which is whether the Agreement should contain the limitations on an ILEC's obligation to combine UNEs on behalf of a CLEC which are set forth in *Verizon Comm., Inc.* SBC Illinois' understanding of those limitations is set forth in its proposed section 9.3.3.9. Under that section, one of the conditions necessary to trigger an obligation on the part of SBC Illinois to perform the work to create a new UNE combination for AT&T is that AT&T is unable to make the combination for itself. *See* SBC Illinois' proposed subsection 9.3.3.9.5.1. The arguments of AT&T and Staff that this condition should not apply to this Agreement have been fully addressed in the sections of this Reply Brief and SBC Illinois' Initial Brief that address UNE Issue 10.

Neither AT&T nor Staff address the question of under what circumstances AT&T should be deemed to be able to combine UNEs for itself. In particular, neither AT&T nor Staff dispute SBC Illinois' position that, as a factual matter, AT&T is able to combine UNE for itself in situations where it is collocated or has an adjacent collocation arrangement. Accordingly, if the Commission adopts SBC Illinois' position on UNE Issue 10, then the Commission should also adopt SBC Illinois' proposed contract language reflecting its unrebutted position regarding the

circumstances in which AT&T should be deemed to be able to combine UNEs for itself.[17]

AT&T argues that SBC Illinois' proposed contract language for UNE Issue 15 would somehow result in a change in the process by which SBC Illinois accommodates a CLEC request to convert an existing UNE-P arrangement to a line splitting arrangement. AT&T Br. 132-133. AT&T's assertion is simply wrong. In a line splitting arrangement, SBC Illinois is providing a stand-alone loop and a stand-alone switch port with transport to a CLEC's collocation arrangement The actual "combining" of the elements physically occurs within the CLEC's collocation arrangement via the CLEC's splitter. As AT&T correctly indicates, SBC Illinois allows the splitter to be pre-wired so that the CLEC does not have to perform any physical work in the central office in order to achieve connectivity at the time the elements are provisioned. These current line splitting procedures were approved by the Commission in Docket 01-0662. There is nothing in the contract language proposed by SBC Illinois that provides for a change in those line splitting procedures and SBC Illinois has no plans to make such a change.

[17] AT&T's assertion that SBC Illinois' position regarding Issue 15 "borders on bad faith negotiation" (AT&T Br. 134-135) is completely unwarranted. The language in section 9.3.1 describing SBC Illinois' obligation to combine UNEs is expressly made "[s]ubject to the provisions hereof." The fact that AT&T disagrees with SBC Illinois' position regarding certain of the referenced provisions does not justify an accusation of "bad faith negotiations."

**UNE:**

**ISSUE 16: Does UNE-P include operator service, directory assistance, tandem switching and call-related databases?**

**Sections 9.3.1.1 and 9.3.1.3.4**

**SBC Illinois Testimony: Niziolek Direct, lines 929-1085; Novack Direct, lines 98-182.**

**SBC Illinois' Initial Brief: pp. 127-130.**

**A. Section 9.3.1.1**

The changes proposed by AT&T to § 9.3.1.1 (AT&T Br. 136) are helpful because they indicate AT&T's agreement that the UNE platform does not include OS/DA, call related databases and tandem switching. However, to avoid the qualification that AT&T continues to make ("UNE-P does not *necessarily* include… a number of other components"), (AT&T Br. 136), SBC Illinois proposes the following language for section 9.3.1.1:

> The UNE-Platform (UNE-P) consists of the NID, loop, local switching, and shared transport. Access to signaling and call-related databases shall be performed by SBC Illinois on a TELRIC basis in support of AT&T UNE-P normal call processing. Use of SBC Illinois tandem switching and access to SBC Illinois OS/DA platforms in support of AT&T UNE-P normal call processing is available to AT&T Illinois on a TELRIC basis. At AT&T's discretion, SBC Illinois shall perform Feature Group C customized routing within SBC Illinois end office switches on a TELRIC basis for AT&T UNE-P calls to an AT&T OS/DA platform or to a AT&T designated third party OS/DA platform.

This language clearly defines the UNE platform and clearly describes the access to other UNEs. If this proposal is not acceptable to AT&T or the Commission, SBC Illinois simply recommends rejection of AT&T's proposed language, a position Staff supports in its testimony and brief. Staff Br. 62-63.

**B. Section 9.3.1.3.4**

AT&T does not address this section in its initial brief and therefore SBC Illinois **rests on its testimony and its initial brief.**

**UNE:**

**ISSUE 17:** **Should the Agreement state that SBC will follow OBF EMI guidelines rather than stating the specific detail that may be included in such guidelines, when such detail is subject to change by the OBF forum during the term of the Agreement?**

**Section 9.3.1.3.1**

**SBC Illinois Testimony: Read Direct, lines 27-140; Read Rebuttal, lines 7-29.**

**SBC Illinois' Initial Brief: pp. 131-133.**

The Commission may have difficulty discerning exactly what the parties' differences are with respect to this issue, because, among other reasons, (1) both parties have changed their proposed language; (2) AT&T states (and SBC Illinois agrees) that this issue is "essentially the same" as Comprehensive Billing Issue 4.a – and yet the competing language on the two issues is not the same; and (3) much of what SBC Illinois is proposing is not immediately apparent on the face of SBC Illinois' language, because that language incorporates by reference other provisions in the Agreement. In order to minimize the potential confusion, we begin by setting forth the competing language. We then specifically identify the parties' differences and explain why each difference should be resolved in favor of SBC Illinois.

As the Commission will see, the way to resolve this issue is to first decide Comprehensive Billing Issue 4.a. That decision will drive the principal decision on UNE Issue 17, which the Commission will then be able to dispose of by deciding two ancillary questions.

According to AT&T's initial brief, at p. 138, AT&T now proposes the following language for UNE section 9.3.1.3.1:

> **SBC-Illinois shall maintain and provide records of sufficient detail for UNE-P to enable AT&T billing of its end users and other carriers for all call types (i.e., call details for originating and terminating calls).** SBC-Illinois will provide the records to AT&T in OBF EMI **standard** format. **The originating carrier number (OCN) will be included in the EMI records, with an effective date targeted for the 1st quarter 2004,**

**according to current industry standards. The UNE Identifier will be included in all EMI records involving unbundled services or elements.**

SBC Illinois proposes the following language:

> **In accordance with section 9.2.7.4.4 of Schedule 9.2.7 "Interoffice Transmission Facilities" and 27.14.4 of Article 27 "Comprehensive Billing,"** SBC Illinois will provide the records to AT&T in OBF EMI format **and retain these records for one year**.[18]

The differences between AT&T's language and the SBC Illinois language, and the reasons the differences should be resolved in favor of the SBC Illinois, are:

1. Identification of calls for which SBC Illinois must provide OCN. AT&T states that SBC Illinois' language "does not specify that SBC Illinois will provide the originating carrier OCN to AT&T." AT&T Br. 139. That is incorrect. SBC Illinois' language begins with the words, "In accordance with section 9.2.7.4.4 of Schedule 9.2.7 'Interoffice Transport' and 27.14.4 of Article 27 'Comprehensive Billing' . . . ." Those provisions expressly provide that "SBC-Illinois will include the OCN of the originating carrier . . . ." Thus, the SBC Illinois language that is the subject of UNE Issue 27 does, by incorporation, specify that SBC Illinois will provide originating carrier OCN to AT&T. However, there is still an important disagreement: For which categories of calls will SBC Illinois provide originating carrier OCN to AT&T? That is Comprehensive Billing Issue 4.a (which concerns section 9.2.7.4.4 of Schedule 9.2.7 and section 27.14.4 in Article 27) – and that is why the parties agree that this issue UNE 17 is essentially the same as Comprehensive Billing Issue 4.a.

As SBC Illinois has fully explained in connection with Comprehensive Billing Issue 4.a, SBC Illinois can and will provide AT&T with OCNs of originating carriers that utilize SBC Illinois unbundled local switching to send traffic to an AT&T unbundled local switch port, but

[18] The language SBC Illinois originally proposed did not include the words "and retain these records for one year." Staff proposed that addition, however, and SBC Illinois accepted it. *See* SBC Br. 133.

SBC Illinois cannot, and therefore cannot properly be required to, include in the usage records it provides to AT&T the OCNs of originating carriers that are not utilizing USL or that AT&T is not terminating as a user of ULS. That was the testimony of SBC Illinois witness Read, and AT&T neither rebutted it nor challenged it at hearing. *See infra* discussion of Comprehensive Billing Issue 4.a. AT&T's recitation of the reasons that it should not have to obtain the information it needs from other sources (AT&T Br. 140-141) is therefore irrelevant. The Commission cannot reasonably require SBC Illinois to provide OCNs in call usage records for calls for which OCNs simply do not exist in call usage records.

2. AT&T attempt to lock in current industry standards. SBC Illinois explained in its initial brief (at 132-133) why the Agreement should not require SBC Illinois to adhere for the entire term of the agreement to what now happen to be "current industry standards" for EMI records. Staff agrees (Staff Br. 66), and AT&T's only response is to say that neither SBC Illinois nor Staff has identified any specific current standard that would be, but should not be, locked in under AT&T's language. AT&T Br. 140. The answer, of course, is all of them.

3. Inclusion of AT&T's proposed first sentence. As Staff observes (Staff Br. 66), AT&T's proposed first sentence for section 9.3.1.3.1 is "too vague and if AT&T wants detail it should be specific about which detail it wants." Staff first made that point in testimony (Staranczak lines 425-432) and AT&T did not contest it in its brief. Staff also suggested, however, that SBC Illinois be required to retain records for one year, and SBC Illinois has adopted that suggestion.

Staff recommends that SBC Illinois be required to provide OCNs to AT&T, but Staff's recommendation does not take into account (and Staff's brief does not even mention) whether SBC Illinois is able to do so – rather, the recommendation turns solely on how readily AT&T can obtain the information from other sources. Staff Br. 65-66. For this reason alone, Staff's

recommendation should be rejected. In any event, the record establishes that "OCNs are readily available to AT&T from other databases" (Staff Br. 64), so Staff's concern should be satisfied. First, the LIDB database is the most likely source for the OCNs that AT&T seeks, and the undisputed evidence is that AT&T has complete access to LIDB databases. Read lines 209-222. LIDB is a widely-used industry database that is available to AT&T from several industry providers, including unregulated providers such as Verisign and TSI, and regulated providers such as Verizon and BellSouth. Silver Rebuttal lines 181-186 and Sch MDS 6-9. Naturally, unregulated providers do not tariff their rates, and so it is difficult to say what they might charge on a per query basis for the OCN information AT&T seeks. What is certain is that AT&T need not buy these services from SBC Illinois, so this will not be a "revenue producer" for SBC Illinois, as AT&T suggests (AT&T Br. 298) unless AT&T chooses to make it one. In any event, if AT&T is concerned about the costs to access any of these potential LIDB databases, it was responsible for producing evidence that these costs are unreasonable. AT&T has not come forward with that evidence. It is simply incredible to SBC Illinois that AT&T does not have this information in its possession, especially since AT&T –the largest long distance carrier in the country – is a big user of LIDB services today. Silver Rebuttal lines 175-181. All that is required to access a LIDB database is an SS7 network, and as AT&T argues in Interconnection Issue 10 of this proceeding, it has a state of the art SS7 network. AT&T Br. 67-68.

Second, Mr. Read testified that there are "other vendors" besides LIDB providers that have "all of our numbers and the OCNs associated" for all of SBC's 13 states. Tr. 197. Thus, there is a second group of database providers – different from the LIDB providers – that have the desired OCN information and that are in the business of selling that information to carriers such as AT&T. AT&T has failed to produce any evidence about these providers, either, so the Commission is unable to critically examine AT&T's assertions that OCN is not available on

reasonable terms. And it is not surprising that AT&T has not come forward with such evidence – it would rather get the OCN information for free from SBC Illinois. And that is when SBC Illinois has the OCNs. AT&T's proposal is even more nonsensical in situations where the OCN is not available in SBC Illinois' LIDB, because in those situations AT&T's proposal would require SBC Illinois to buy the information from third party providers and then give it to AT&T for free.

AT&T's claim that it should get OCN for free is particularly galling because it will certainly cost *someone* to provide the OCN information AT&T seeks – if AT&T is successful in avoiding those charges itself, those costs will be borne by SBC Illinois – either in the time and resources to access the OCNs that are available in its own LIDB database or in the charges it would have to pay third party providers to retrieve the OCNs that are stored in their databases. There is absolutely no reason why SBC Illinois should have to bear this cost; it has done nothing wrong and it is not withholding any billing information from AT&T. To the contrary, it is developing reports and initiating special projects to give AT&T as much information as is available. AT&T's demand that SBC Illinois shoulder these costs is indefensible.

For all these reasons, the Commission should resolve UNE Issue 17 by adopting the language proposed by SBC Illinois and rejecting the language proposed by AT&T.

**UNE:**

**ISSUE 18.a:** **Whether SBC is obligated to modify its OSS to accommodate AT&T and its third party agent and their inter-CLEC communication to enable the HBSS to place orders on AT&T's behalf for Line Splitting.**

**Schedule 9.2.2, Section 9.22.5.1**

**SBC Illinois Testimony: McNiel Direct, lines 366-551; McNiel Rebuttal, lines 153-192.**

**SBC Illinois' Initial Brief: pp. 134-137.**

AT&T makes it appear that versioning is something that SBC Illinois dreamed up to harm CLECs. AT&T Br. 143-144. Nothing could be further from the truth. It is the CLEC industry that insisted that SBC Illinois maintain different "versions" of local service ordering guidelines "LSOG". McNiel Direct lines 425-432. The "same version policy" that AT&T complains about is not a "policy" at all. It simply means that if Covad submits an order on AT&T's behalf using LSOG version 4, the record will be returned by SBC Illinois in LSOG version 4 and if AT&T is using LSOG version 5.02, it may not be able to make sense of the record. SBC Illinois has done nothing wrong in this scenario. In fact, it is simply following CLEC instructions by processing orders on the LSOG version in which they are submitted.

AT&T and Covad have several alternatives available to them, but AT&T insists that none of the alternatives is preferable to foisting upon SBC Illinois the responsibility for developing a solution that allows different versions to appear as if they are not different at all. For example, Covad could issue orders using a graphical user interface ("GUI"), but AT&T witness Webber complains that this would require AT&T enter the order twice, once to SBC Illinois in the GUI and once within AT&T's backend systems. Webber Direct lines 446-451. Nowhere does AT&T claim that this solution will not work – it's just not convenient for AT&T. With respect to the second alternative, (submission via EDI or CORBA), AT&T complains that it does not have sufficient trading partner IDs to do this because it would have to "assign" one of its three TPIDs"

to Covad. AT&T Br. 145. A TPID is merely the address to which SBC Illinois returns an electronic EDI record, and if AT&T does not want to assign a TPID to Covad, it could receive the records back from SBC Illinois and forward them on to Covad itself. AT&T has nothing critical to say about the LSPAUTH alternative. In fact, AT&T witness Weber regards it as a "possible solution". Webber Direct lines 552-568. Clearly, the alternatives open to AT&T and Covad cannot be as readily dismissed as AT&T would like.

Next, AT&T argues that this situation is "discriminatory and anticompetitive" because it does not apply to SBC Illinois and data CLECs in a line sharing situation. AT&T Br. 145. The FCC established these two separate processes for line sharing and for line splitting, in each case to benefit CLECs by allowing them to offer advanced services more easily. SBC Illinois has faithfully implemented the requirements of these FCC-mandated processes and it is ironic that AT&T is arguing that the differences between these two processes is "anti-competitive". Moreover, AT&T is again comparing apples and oranges. The versioning issue in Issue 18a involves a *line splitting* arrangement in which a CLEC purchases an unbundled loop and "splits" the loop to create separate voice paths and data paths. In AT&T's line splitting situation, there are two CLECs that submit orders to SBC Illinois for the same loop. SBC Illinois never engages in line splitting. Instead, it offers *line sharing* on a nondiscriminatory basis to all CLECs. Line sharing occurs when SBC Illinois provides voice service on a copper loop, but "shares" the high frequency portion of the loop with a CLEC so that the CLEC may use it to provide DSL service to an end user. With line sharing there can be only one CLEC submitting orders to SBC Illinois and there can never be a "versioning" issue with line sharing at all. These two processes are fundamentally different and they cannot be compared in the way AT&T attempts to do.

**UNE:**

**ISSUE 19:** **Whether the DSL/PSD parameter or Proof of continuity parameter test is appropriate to assess the loop DSL qualifications.**

**Schedule 9.2.2, Sections 9.2.2.12.1.1, 9.2.2.12.1.2, 9.2.2.13.2.1.3, 9.2.2.13.2.1.4, 9.2.2.13.2.3.2, 9.2.2.13.2.3, and 9.2.2.13.2.3.**

**SBC Illinois Testimony: Chapman Direct, lines 64-305; Odle Direct, lines 48-363.**

**SBC Illinois' Initial Brief: pp. 138-142.**

AT&T is profoundly confused about the technology involved in UNE Issues 19, 21 and 22. To put it simply, AT&T fails to make basic distinctions between the *copper loop* provided by SBC Illinois and the *DSL service* created by AT&T. The copper loop is just one of several inputs into the DSL service that AT&T creates by combining: 1) a copper loop (provided by SBC Illinois); 2) a digital subscriber line access multiplexer or "DSLAM" in its central office (provided by AT&T); 3) inside wiring (provided by AT&T or the end user); and 4) a modem at the end users premises (provided by AT&T or the end user). Odle Direct lines 217-218; 337-344, n. 21. A copper loop by itself does not provide high speed transmission of data.

AT&T argues that the technical standards that apply to DSL service ("DSL/PSD mask") should apply to the input, i.e., the copper loop. This is wrong, and an analogy may illustrate AT&T's fundamental mistake. A baker uses flour, eggs and yeast to bake bread. The farmer that provides the flour can vouch for the characteristics of the flour – e.g., whether it is wheat flour or oat flour -- but cannot vouch for the characteristics and the quality of the bread that the baker makes with the flour. That depends entirely on the other ingredients the baker uses, how the baker mixes the dough and how he bakes the bread. In the same vein, SBC Illinois can vouch for the technical characteristics of the copper loop, but cannot vouch for the DSL service that AT&T creates when it combines the loop with the DSLAM, inside wire and the end user modem.

The PSD mask to which AT&T refers is a technical standard that applies only to DSL service – not to copper loops. AT&T's language in section 9.2.2.13.2.1.4 would require SBC Illinois to provision a copper loop that meets a standard for DSL service (a technical *nonsequitur*) and would contractually obligate SBC Illinois technicians to "perform work necessary to correct the situation" when it fails to do so (a technical impossibility). SBC Illinois witnesses Odle took great care in his testimony to explain where AT&T is missing the boat. Odle Direct lines 73-362. AT&T simply refuses to grasp the facts.

AT&T argues that it is only asking SBC Illinois to guarantee the PSD mask that AT&T is required by FCC regulation to identify at the time it orders a basic copper loop. AT&T Br. at 148 - 149. AT&T fails to understand that the reason it is required to identify the PSD mask is for the benefit of the public switch network – not for AT&T's benefit. The FCC recognizes that the technology deployed by AT&T on a basic copper loop might emit electric signals which interfere with the operation of voice signals over that same line or in nearby lines. Thus, CLECs such as AT&T are required to specify the PSD mask at the time they order a DSL capable loop so that SBC Illinois and other CLEC will know what technology is being used. In addition, SBC Illinois has an FCC-mandated obligation to manage spectrum, which it complies with by compiling an inventory of the types of DSL service CLEC's have deployed. SBC Illinois is then obligated to disclose, upon CLEC request, the number of loops and the type of technology deployed, using a particular advanced services technology within a binder group so CLECs "can independently and expeditiously determine what services and technologies it can deploy within the incumbent LEC's territory."[19] Odle Direct lines 156-163. AT&T completely mis-construes these PSD disclosure requirements.

[19] *See* Advanced Services Order, ¶'s 61, 72 and 73.

The tariff is completely consistent with SBC Illinois' position. Illinois C.C. No. 20, Part 19, Section 2, 1st Revised Sheet No. 21, Section 2.6 provides that a "CLEC must advise the Company of the PSD mask approved or proposed by T1.E1 that reflects the service performance parameters of the technology to be deployed over the HFPL. The CLEC, at its option, may provide any service compliant with that PSD mask so long as it stays within the allowed service performance parameters." AT&T's position cannot be reconciled with this tariff language.

Finally, AT&T argues that SBC Illinois does not sufficiently identify the technical characteristics of the basic copper loops it provides. AT&T has apparently overlooked section 9.2.1.3 of Schedule 9.2.1, which specifies with particularity the technical characteristics that apply to unbundled local loops, such as those set out in technical reference AM-TR-TMO-00122 and AM-TR-TMO-00123. These technical specifications are in addition to the requirement that SBC Illinois provide a loop that is free of defects, tested and guaranteed for continuity.

The Commission should reject AT&T's proposed language because it is so fundamentally mistaken and would lead to an unfair outcome. The Commission should adopt SBC Illinois' proposed language for UNE Issues 12, 21 and 22.

**UNE:**

**ISSUE 20: What language should apply to situations where the SBC personnel are on hold for 10 minutes in acceptance testing and cooperative testing situations?**

**Schedule 9.2.2, sections 9.2.2.13.2.1.6 and 9.2.2.13.2.3.4 (both of which are identical)**

**SBC Illinois Testimony: Chapman Direct, lines 306-497; Odle Direct, lines 364-702.**

**SBC Illinois' Initial Brief: pp. 143-146.**

AT&T is not playing straight with the facts on Issue 20. SBC Illinois does not propose a "new process" for acceptance testing of DSL-capable loops. AT&T Br. at 153. To the contrary, SBC Illinois and many CLECs have been using the process described by SBC Illinois for many years. Odle Direct lines 515-520. This process, in which the SBC Illinois technician remains at the job site and attempts to contact the CLEC for ten minutes so that the CLEC can perform its own test, was developed by SBC Illinois and the CLEC industry in 2000 as an accommodation to CLECs. This process allows CLECs to avoid dispatching their own technicians to the job site and has worked well over the years. This is not a "new process" as AT&T erroneously claims.

AT&T's argument that SBC Illinois wants to "summarily discard a process that the parties have developed over a number of years" is equally false. The Customer Not Ready ("CNR") process has never applied to the situation presented in Issue 20. AT&T is comparing apples (the CNR process for un-installed orders) to oranges (the 10 minute window process for CLECs to answer the phone for acceptance testing on installed loops) and is asking this Commission to find that there is no difference between the two. There are.

First, the CNR process has never been used (and is not appropriate for) the situation where a UNE loop has already been installed, completed and tested by SBC Illinois. Rather, it is used in situations where the UNE is never installed in the first place because the customer is not ready. Of course it makes sense to reschedule the installation appointment in this situation -- it

has to be rescheduled because the UNE is not installed yet. There is no need, however, to reschedule an installation visit once the SBC Illinois technician has successfully installed, completed and tested the DSL capable loop.

Second, the CNR process is never used simply to reschedule a CLECs acceptance testing of a loop, and there is no established history of doing this as AT&T implies. AT&T Br at 154. Odle Direct, lines 491-510. AT&T tries to blur the difference between these two processes so that it can avoid paying SBC Illinois for the costs it incurs to make a second dispatch after its DSL loop is already installed, complete and tested and after AT&T fails to respond to SBC Illinois within the 10 minute window. The Commission should recognize this tactic for what it is and reject AT&T's proposed language.

AT&T also makes a number of random observations, none of which support its proposed language. For example, AT&T asserts that if it cannot respond to SBC Illinois within the ten minute window it should not be held accountable because "a delay could be caused at either end". AT&T Br. at 154. This is simply untrue. The ten minute period starts when the SBC Illinois technician finishes the job and calls AT&T. It is impossible for SBC Illinois to cause any delay in that situation. Odle Direct lines 526-529. AT&T also argues that its language "maintains the status quo", AT&T Br. at 154, but the status quo since 2000 has been SBC Illinois' process for DSL capable loops. Perhaps AT&T is simply unfamiliar with that established process.

AT&T goes on to argue that it should not be expected to "turn up a customer on a loop without testing it first". AT&T Br. at 154. SBC Illinois' process provides a simple, convenient way for AT&T to perform an acceptance test while the SBC Illinois technician is present at the job site. SBC Illinois' proposal is designed to save CLECs the cost of paying for a re-dispatch of

the field technician. In short, SBC Illinois facilitates AT&T's ability to perform and acceptance test.

There is a final reason why SBC Illinois should not be required to re-dispatch free of charge to assist AT&T with its Acceptance test. Agreed-upon language in section 9.2.2.13.2.1.7 says that if a trouble ticket is opened on the loop within 24 hours and the trouble resulted from an SBC Illinois error, AT&T will be credited for the cost of the Acceptance test. AT&T may also have SBC Illinois re-perform the Acceptance test at the conclusion of the repair phase -- again at no charge. Thus, AT&T has safeguards built in should the order be closed on a problem loop without an AT&T Acceptance test.

For all these reasons, the Commission should reject AT&T's proposed language for Issue 20.

**UNE:**

**ISSUE 21:** **Should the basic metallic loop parameters or the specific loop parameters associated with the loop be verified during cooperative testing?**

**Section 9.2.2.13.2.3**

**SBC Illinois Testimony: Chapman Direct, lines 35-62, 498-516; Odle Direct, lines 48-362.**

**SBC Illinois' Initial Brief: p. 147.**

This issue is addressed in the discussion under UNE Issue 19.

**UNE:**

**ISSUE 22: Should SBC be required to guarantee local loops will perform as ordered by AT&T beyond basic metallic loop parameters?**

**Section 9.2.2.14.7**

**SBC Illinois Testimony: Chapman Direct, lines 35-62, 517-562; Odle Direct, lines 48-362.**

**SBC Illinois' Initial Brief: pp. 148-149.**

This issue is addressed in the discussion under UNE Issue 19.

**UNE:**

**ISSUE 23:** **Should AT&T be allowed to commingle local and toll OS/DA traffic on existing FG D trunks?**

**ISSUE 24.a:** **Should SBC Illinois be required to deploy custom routing for AT&T based on AT&T's proposed schedule or must AT&T order custom routing via the BFR process?**

**ISSUE 24.b:** **In what manner should SBC Illinois be required to provide customized routing associated with UNEs?**

**Sections 9.2.6.1.7 and 9.2.6.1.7.2 of Schedule 9.2.6**

**SBC Illinois Testimony: Novack Direct, lines 184-365.**

**SBC Illinois' Initial Brief: pp. 150-155.**

**A. Issue 23**

AT&T's sole argument in support of its position is that there is "no technical reason" why SBC Illinois should not provide custom routing over Feature Group D. AT&T Br. 155. AT&T is simply wrong on the issue of technical feasibility.

AT&T offers no evidence that it is technically feasible to route OS/DA traffic over Feature Group D trunks. All AT&T can point to is the bald assertion of AT&T witness Noorani that it is so, (AT&T Br. 155), but this is not evidence and it is not anything the Commission could use to support a decision adverse to SBC Illinois.

Mark Novack, in contrast, provides ample factual basis for his testimony that custom routing over Feature Group D is not now technically feasible. Mr. Novack explains that Feature Group D is not used for signaling to operator service or directory assistance host switches. Novack Direct lines 242-259. Rather, this is done only over Feature Group C signaling. *Id.* line 248. He explains that all switch vendors -- including Lucent, Nortel, Siemens and Ericsson -- would have to develop switch upgrades to support AT&T's proposals. *Id*. lines 285-293. He further explains that Nortel switches are a particular concern because these switches account for approximately 45% of the switches deployed by SBC Illinois in this state and Nortel does not

have a solution to the Feature Group D custom routing issue at this time. *Id*. lines 271-280. Finally, he explains that tests performed by SBC in California revealed additional problems in developing the records necessary for proper billing. So, even if it becomes technically feasible to support custom routing over Feature Group D at some point in the future, there are a whole host of billing issues that must be overcome. *Id*. lines 280-283. Mr. Noorani's paper thin assertion simply cannot stand up against this detailed evidence that custom routing is not now technically feasible.

In an attempt to salvage its position, AT&T cites to a single state arbitration decision in its favor from the Indiana Utility Regulatory Commission in IURC Cause No. 40-57I INT 03. This issue was wrongly decided, however, because the Indiana Commission ignored, or overlooked, clear evidence that AT&T's proposal is not technically feasible. This Commission should reject AT&T's offer to follow such a mistaken decision. This is particularly true since other states have decided the issue in SBC Illinois' favor, starting with Illinois. In Docket No. 01-0662 (the 271 proceeding) this Commission rejected WorldCom's demand for custom routing over Feature Group D, even though WorldCom actually presented some evidence on the point:

> There comes before us WorldCom's custom routing complaint. We, however, do not see WorldCom to have followed through with a responsible request, on its desired and specialized custom routing. WorldCom appears to suggest that AI fails for not generally acceding to its wishes and shows nothing of its willingness to compensate AI for the task.
>
> WorldCom's other customized routing arguments are not substantiated. With little analysis of the exhibits it puts in front of this Commission, WorldCom would have us find that the customized routing it seeks, is technically feasible. We are not persuaded and the Commission requires nothing further of the Company.

Order, ¶¶ 1985-1986.

AT&T argues that the "only reason" SBC Illinois opposes its request is to impose "unnecessary costs and expense" on AT&T. AT&T Br. 151. This is aggressive advocacy gone

too far. SBC Illinois has a clear duty under the 14 point checklist of section 271 to provide customized routing – which it does so via line class code and AIN options. SBC Br. 151. This Commission has determined that SBC Illinois meets all of its obligations with respect to custom routing and AT&T's unfortunate comments should be disregarded.

Finally, AT&T blithely ignores the huge expense involved in its proposal, an expense that would easily run into the millions, Novack Direct line 358, and would be borne solely by SBC Illinois. The FCC has already ruled, however, that when the ILEC is requested to develop custom routing over Feature Group D it "may recover [the associated cost] from requesting carriers". *Louisiana II*, ¶226. n.727. *See* SBC Br. 154.

**B. Issues 24.a and 24.b**

AT&T's proposed language for UNE Issue 24.a is inseparable from its request that SBC Illinois offer custom routing over Feature Group D. In other words, the aggressive timetables set forth in AT&T's proposed language would apply to *all* forms of custom routing – including the custom routing over Feature Group D which AT&T advocates in Issues 23 and 24b. This is not now technically feasible and SBC Illinois cannot possibly deploy it within those intervals. The Commission should, therefore, reject the proposed implementation schedule and AT&T's language.

SBC Illinois also opposes AT&T's implementation schedule because each custom routing request is different and should be treated on a bona fide request ("BFR") basis. Requests for custom routing can vary dramatically. They can involve just a few end offices, or several hundred; they can involve just a few trunks; or several hundred; they can involve just of one type of call (e.g., operator services), or several types (e.g., operator services, international, toll free, 900-976). Since they can vary so widely, it would be impractical to impose uniform terms and conditions upon custom routing requests. Under SBC Illinois' proposal, CLECs would submit

requests under the BFR process so that the CLEC would be able to specify the precise routing instructions it has mind, and so that SBC Illinois, in turn, would be able to provide a realistic implementation schedule given the scope of the work involved[20].

With respect to UNE Issue 24.b, SBC Illinois rests on its testimony, its Initial Brief. and the arguments it makes above with respect to UNE Issue 23.

[20] SBC Illinois will not respond to AT&T's point about the California Agreement between AT&T and SBC California. That fact was not raised in AT&T's testimony on UNE Issue 24. Rather, it was a passing comment in Mr. Noorani's testimony on UNE Issue 26. For that reason, SBC Illinois assumed it had nothing to do with UNE Issue 24 and did not respond. UNE Issue 26, of course, was settled on June 13, 2003.

**UNE:**
**ISSUE 25: Under what conditions should SBC provide Unbundled Shared Transport?**

**Schedule 9.2.7, Section 9.2.7.1.1.1**

**SBC Illinois Testimony: Niziolek Direct, lines 1087-1201; Novack Direct, lines 367-416; Novack Rebuttal, lines 17-32.**

**SBC Illinois' Initial Brief: p. 156.**

Since the parties now agree that unbundled local transport must be used in conjunction with an unbundled switch port, the sole remaining issue is whether AT&T's proposal to include language prohibiting "restrictions on use" is appropriate. Staff agrees with SBC Illinois that the agreed upon language in section 9.2.1 covers all "restrictions on use" issues in a comprehensive and fair manner by preventing SBC Illinois from imposing any restriction on use other than those permitted under federal and state law. Staff Br. 67-69. Thus, AT&T's language serves no purpose and should be rejected.

AT&T's response is a rambling discussion which does not address the disputed language. AT&T's brief discusses the capacity of SBC Illinois' interoffice network (AT&T Br. 161) and charges that apply to calls terminated over unbundled shared transport (AT&T Br. 160-161), but none of those subjects are addressed by AT&T's proposed contract language. Indeed, SBC Illinois does not understand the arguments AT&T is making on those issues, let alone how those issues relate to the language AT&T proposes. AT&T's proposed contract language simply does not address – one way or the other – the issues that AT&T raises in its brief. [21]

For all of the reasons set forth by SBC Illinois and Staff, AT&T's proposed language should be rejected and Staff's compromise language should be adopted.

[21] It is interesting to note that AT&T's brief closely mimics the testimony of Dan Noorani on lines 1551- 1648. Mr. Noorani was purportedly addressing UNE issues 23, 24a, 24b, 25 and 26 – yet AT&T now offers *all* of that testimony in support of UNE Issue 25. It is no wonder that its brief appears to be disjointed.

**UNE:**

**ISSUE 27: Should the reciprocal compensation terms and conditions contained in Article 21 apply to ULS-ST reciprocal compensation?**

**Section 9.2.7.4.1-3**

**SBC Illinois Testimony: Pellerin Direct, lines 1749-1757.**

**SBC Illinois' Initial Brief: p. 157.**

This issue is identical to Reciprocal Compensation Issue 1 and should be resolved in the same way. *See* SBC Br. 157; AT&T Br. 162; Staff Br. 70-71.

**UNE:**

**ISSUE 28: Should SBC Illinois be required to provide to AT&T the OCN of 3rd party originating carriers when AT&T is terminating calls as an unbundled switch user of SBC Illinois?**

**Section 9.2.7.4.4**

**SBC Illinois Testimony: Pellerin Direct, lines 1758-1808.**

**SBC Illinois' Initial Brief: p. 158-159.**

This issue is identical to Comprehensive Billing Issue 4, except that this issue involves an SBC Illinois-proposed sentence that that issue does not (namely, "AT&T will be solely responsible for establishing compensation arrangements with all telecommunications carriers to which ULS-ST traffic is delivered or from which ULS-ST traffic is received, including all ULS-ST traffic carried by Shared Transport-Transit"). SBC Br. 158.[22] Unlike the rest of the disputed language for this issue, that sentence should be included in the Agreement regardless how the Commission resolves Issue 4, for the reasons set forth in SBC Illinois' initial brief.

AT&T's initial brief makes no mention of the one sentence that is unique to this issue. *See* AT&T Br. 163-164. Accordingly, SBC Illinois rests on its initial brief, but reserves the right, in the event that AT&T addresses the point in its reply brief, to respond further or to have AT&T's reply stricken.

[22] In its initial brief, SBC Illinois stated that except for the additional sentence, this issue is identical to Comprehensive Billing Issue 4.a. Actually, the disputed language for this issue encompasses Comprehensive Billing Issues 4.a and 4.b, not just 4.a.

**UNE:**

**ISSUE 29: How should reciprocal compensation rate elements be structured?**

**Section 9.2.7.5**

**SBC Illinois Testimony: Pellerin Direct, lines 1809-1816.**

**SBC Illinois' Initial Brief: p. 160.**

This issue is identical to Reciprocal Compensation Issue 1 and should be resolved in the same way. *See* SBC Br. 160; Staff Br. 70-71.

AT&T seems to believe there is more to this issue than that (*see* AT&T Br. 165-168), but there is not.

There have been only two bits of disputed language in UNE section 9.2.7.5. One is AT&T's proposed reference to "**ULS-ST Reciprocal Compensation**." That reference will be included or not depending on the resolution of Reciprocal Compensation Issue 1. The other *was* SBC Illinois' proposed references to:

**Reciprocal Compensation – Call Set Up**

**Reciprocal Compensation – Call Duration**

Those references were related to Intercarrier Compensation Issue 8.a, which has settled. They are no longer relevant, and to remove any doubt on that score SBC Illinois hereby withdraws them, and replaces them with "**Reciprocal Compensation in accordance with Article 21."**

With that clarification, AT&T will presumably agree that this issue is identical to Reciprocal Compensation Issue 1.

**UNE:**

**ISSUE 30: Should SBC be required to administer LIDB information provided by AT&T?**

**Section 9.2.8.19.1**

**SBC Illinois Testimony: Pellerin Direct, lines 1817-1894.**

**SBC Illinois' Initial Brief: pp. 161-162.**

SBC Illinois' initial brief on this issue addresses all the arguments in AT&T's initial brief that warrant response.

**UNE:**

**ISSUE 31: What interfaces are used to administer data when AT&T resells data to a third party?**

**Sections 9.2.8.19.4 and 9.2.8.19.6**

**SBC Illinois Testimony: Pellerin Direct, lines 1895-1930.**

**SBC Illinois' Initial Brief: pp. 163-164.**

SBC Illinois' initial brief on this issue addresses all the arguments in AT&T's initial brief that warrant response. In particular, SBC Illinois explained precisely why AT&T's language goes too far: It would require the use of the LSR process for resold services even though the LSR process cannot be used for that purpose. SBC Br. 163-164. AT&T has no answer to that point, and this issue must therefore be resolved in favor of SBC Illinois.

The discussion of this point in SBC Illinois' initial brief was taken directly from the testimony of SBC Illinois' witness, and AT&T chose to say nothing in response to that testimony in its initial brief. If AT&T had done so, SBC Illinois would have had an opportunity to reply. Accordingly, in the event that AT&T does address this point in is reply brief, SBC Illinois reserves the right to respond or to have AT&T's reply stricken.

**UNE:**

**ISSUE 32.a:** **Should SBC be required to provide access to SBC designed AIN features, functions and services?**

**ISSUE 32.b:** **Should Access to AIN be provided pursuant to a BFR with all terms and conditions and pricing negotiated pursuant to that BFR?**

**Sections 9.2.6.1.3.4 of Schedule 9.2.6 (Issue 32.a)**
**Section 9.2.8.21 of Schedule 9.2.8 (Issue 32.b)**

**SBC Illinois Testimony: Chapman Direct, lines 563-1126; Novack Direct, lines 478-684.**

**SBC Illinois' Initial Brief: pp. 165-172.**

AT&T does not attempt to distinguish the FCC's *UNE Remand Order* which conclusively establishes that SBC Illinois' Privacy Manager® service is not subject to any unbundling obligation. AT&T attempts to get around this very clear precedent by arguing that state commissions can "provide additional UNEs beyond those on the national list". AT&T Br. 173. The fallacy of this argument is that AT&T does nothing to satisfy the very rigorous "necessary" and "impair" standards that must be met to establish such a new UNE. FCC Rule 51.317, for example, requires the CLEC to demonstrate that "lack of access to the network element *precludes* a requesting carrier from providing the services it seeks to offer" (emphasis added). These rules were vacated in *USTA v. FCC*, 290 F.3d. 415 (D.C. Cir. 202) ("*USTA*"), but AT&T made no effort to demonstrate a "necessary" and "impair" analysis under either the vacated rules or under the standard set forth in *USTA*.

Any such effort would be doomed to failure from the outset, however, because the FCC has conclusively established that Privacy Manager® is not subject to unbundling. In the face of that conclusive ruling by the FCC, a state could reach no contrary conclusion. A state's authority to identify "additional" UNEs means, at most, that a state may identify additional UNEs where the FCC has not already resolved the question whether a particular network element is subject to

an unbundling requirement. It does not give a state the authority to overrule the FCC on the matter.

AT&T's fall-back theory fares no better. It argues that it should have access to Privacy Manager® because it does not have meaningful access to the SCE. That argument, in turn, is based on AT&T's claim that it can only gain access to the SCE through a BFR process. AT&T Br. 175. AT&T is wrong on both counts. It *does* have meaningful access to the SCE and it *does not* have to go through the BFR process to access the SCE to design a new service. Mr. Novack clearly made this point on redirect examination:

> Q. I think you got one step ahead of me there. But just so I understand it, what you described are two separate steps, correct? One step in which there is access to the SCE which can be accomplished without going through the BFR procedure, correct?
>
> A. Certainly.
>
> Q. And then once a CLEC accessed the SCE and develops some functionality it wants SBC to employ within the SBC network, is that the situation then that the BFR is appropriate?
>
> A. Yes.

Tr. 156-157. In order to make this crystal clear, SBC Illinois modified its proposed language for section 9.2.8.21 to clearly state that it "will provide AT&T access to SBC-AMERITECH's AIN Service Creation Environment ("SCE") for the creation and modification of AT&T's AIN services". SBC Br. 169-171. Except for the inclusion of the word "AT&T" at the end of that sentence, this is the precise language AT&T proposed for SCE access. Under these

circumstances, AT&T cannot complain that it is not getting reasonable access to the SCE[23] and the Commission must find that SBC Illinois provides access to the SCE.

AT&T cites to a decision of the Public Utility Commission of Texas in *SWBT/MCI Metro Arbitration*, Docket No. 24552.[24] This case is easily distinguishable from the facts before this Commission because in Illinois there is no requirement to go through a BFR process before gaining access to the SCE or the SMS. This distinction makes all the difference because, in this case, AT&T has exactly the access it desires[25].

Moreover, the TPUC decision, like AT&T's Brief at 175, misstates the law by assuming that access to the SCE and SMS is a *condition precedent* under FCC rules that exempt Privacy Manager® from UNE status.[26] In fact, there is no interdependence between the FCC rules that require access to the SCE / SMS [27] and the FCC rules that exempt Privacy Manager® from UNE status. The FCC included these provisions in separate and independent subsections in 47 CFR

[23] Other AT&T language which SBC Illinois adopted states "the parties will mutually agree to the rates, terms and conditions applicable to such access". If the Commission finds this language problematic, SBC Illinois would not object to its deletion.

[24] SBC Illinois notes that the quotation attributed to the TPUC at page 174-175 of its brief is not found in the Texas Order cited.

[25] The California Decision referenced by AT&T at page 173 was the result of a private arbitration – not a finding of the Public Utilities Commission. Therefore it has absolutely no precedential value and is irrelevant to this proceeding.

[26] The AT&T drafted language from page 9 of the Interim Award falsely provides as follows: "The FCC has established a *pre-condition* to an ILEC being relieved of its duty to provide competitors with non-discriminatory access to proprietary UNEs that do not meet the necessary and impair test." [Emphasis added.]

[27] 47 CFR §§51.319(e) (3)(iii).

Section 51.319(e) and there is no interdependence between them. [28] The operative rule provides that:

> Notwithstanding the incumbent LEC's general duty to unbundle call-related databases, an incumbent LEC shall not be required to unbundle the services created in the AIN platform and architecture that qualify for proprietary treatment.[29]

There is no indication that this rule only applies where there has been a contested case and an express finding that the ILEC permits CLECs to access to the SCE / SMS and there is no such requirement.[30] Even if there were, this Commission has already found in the 271 proceeding that SBC Illinois makes available access to SCE and SMS because this is a required 271 checklist item. Docket No. 01-0662, Order on Investigation, ¶¶ 2210, 2290-2294[31].

While Staff is silent on the Privacy Manager issue, in Docket No. 01-0662 it took the position that there is no basis to require SBC Illinois to provide Privacy Manager® to CLECs. There, Staff argued that the *UNE Remand Order* makes it clear that an ILEC is not required to unbundle Privacy Manager® by either the FCC or the State of Illinois. The Order summarizes Staff's position as follows:

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[28] *See also*, *UNE Remand Order*, Appendix C, Rules 51.319(e)(2)(ii) [no obligation to unbundle AIN services that are proprietary] and 51.319(e)(3)(iii) [obligation to unbundle the SMS and SCE].

[29] 47 CFR §51.319 (e)(2)(ii).

[30] For proof that the FCC knows how and when to express conditions precedent in its regulations, see CFR Section 51.319(f). Under Rule 51.319(f), the ILEC is required to provide unbundled access to operator services and directory assistance "only where the [ILEC] does not provide the [CLEC] with customized routing or a compatible signaling protocol." The condition precedent relationship in Rule 51.319(f) could not be made more clear.

[31] Similarly, the Public Service Commission of Wisconsin recently denied AT&T's request for access to Privacy Manager. *Petition of Wisconsin Bell, Inc. for a Section 271 Checklist proceeding*, Docket No. 6720-TI-170, July 1, 2003 at 201.

> Based on the FCC's UNE Remand Order, Staff asserts, there appears to be no basis for requiring AI to provision Privacy Manager to requesting carriers. (Staff Exhibit 16.0 at 12). As the FCC has stated in paragraph 402 of its UNE Remand Order: [quotation omitted]. Staff disagrees with Z-Tel's position to the contrary. An ILEC is not required to unbundle Privacy Manager by either the FCC or the State of Illinois Staff asserts.

Docket No. 01-0662 Order, ¶¶ 2231-2235. Although Z-Tel had requested direct access to Privacy Manager® as a UNE, the Commission rejected that request.

As a final matter, AT&T devotes substantial energy to discussing the ordering process for Privacy Manager® should it be successful on this issue. AT&T concludes that it should take no longer than a week for it to begin placing orders for Privacy Manager®. AT&T Br. 179. While SBC Illinois is extremely reluctant to even discuss implementation issues because AT&T's arguments on this issue are so ill-founded, it is essential to point out that it would take approximately one year for SBC Illinois to do what AT&T requests. Chapman Direct line 951. Not only would SBC Illinois be required to modify its UNE ordering and provisions processes to accommodate this new UNE, there are technical impediments because SBC Illinois does not now have a means to trigger the Privacy Manager® service on a per call basis for an unbundled switch port. *Id*. lines 928-955.

**UNE:**

**ISSUE 33: Should the LIDB-AS schedule be part of the interconnection agreement?**

**Section 9.2.10**

**SBC Illinois Testimony: Pellerin Direct, lines 1931-1997.**

**SBC Illinois' Initial Brief: pp. 173-175.**

SBC Illinois' initial brief on this issue addresses all the arguments in AT&T's initial brief that warrant response.

**UNE:**

**ISSUE 34: Should this schedule have a separate indemnification section over and above the language found in the GTCs?**

**Section 22.6.2**

**SBC Illinois Testimony: Nations Direct, lines 25-94.**

**SBC Illinois' Initial Brief: pp. 176-178.**

SBC Illinois' initial brief on this issue addresses all the arguments in AT&T's initial brief that warrant response.

**COLLOCATION:**

**ISSUE 1: Should AT&T have the right to access and maintain virtually collocated equipment?**

**Sections 12.2, 12.3.1 through 12.3.4**

**SBC Illinois Testimony: Bates Direct, lines 56-238; Niziolek Direct, lines 1207-1276.**

**SBC Illinois' Initial Brief: pp. 179-183.**

AT&T asks the Commission to maintain the status quo on the issue of CLEC access to virtual collocation arrangements. AT&T Br. 186. But the status quo is not the six year old result of the first AT&T arbitration. The status quo is the Commission's decision in Docket No. 96-0511 in May of 2002, in which it unequivocally held that federal law does not permit CLECs access to virtual collocation arrangements. *See* SBC Br. 179-180. AT&T does not even mention this governing law, let alone try to explain it. Nor does AT&T's brief on this issue present anything that SBC Illinois did not address in its initial brief.

**COLLOCATION:**

**ISSUE 2.b: Can AT&T locate equipment on its own side of a condo building to access UNEs by cabling to SBC, in place of a collocation?**

**Sections 12.3.5-12.3.5.7, Schedule 16.10, New Article 17 (SBC)**

**SBC Illinois Testimony: Bates Direct, lines 240-425.**

**SBC Illinois' Initial Brief: p. 184.**

The disputed language for Collocation Issue 2b refers to the disputed language for Interconnection Issue 3. Despite this, AT&T implausibly claims that the issues are unrelated. AT&T Br. 40. In any event, SBC Illinois will continue to discuss theses issues together.

Most of AT&T's discussion is a reiteration of the testimony of its witnesses, which SBC Illinois fully addressed in its initial brief. AT&T does make a few statements, however, that warrant a response.

First, AT&T relies on the Virginia arbitration decision, claiming that the issue there was "similar" to the one here and that SBC Illinois is taking "substantially the same position" as Verizon took. AT&T Br. 37, 39. But the only thing AT&T says about the Virginia decision in the context of Interconnection Issue 3 (or Collocation Issue 2b) is that the FCC rejected an argument by Verizon that allowing AT&T to interconnect with Verizon's network from within the same building would discriminate against carriers who did not have facilities in the same building. SBC Illinois, however, does not make such a discrimination argument.[32]

[32] In its discussion of Interconnection Issue 3, AT&T notes that it discussed the Virginia case in connection with Interconnection Issue 2. AT&T Br. 37. That is true, but AT&T's discussion of the Virginia case in connection with Interconnection Issue 2 has no bearing on Interconnection Issue 3 or Collocation Issue 2b. Indeed, the paragraphs of the Virginia decision cited by AT&T (AT&T Br. 35-36) have nothing to do with intra-building or condominium arrangements.

**[MARK: IF WE ARGUE IN CONNECTION WITH INTERCONNECTION ISSUE 2 THAT THE ICC SHOULD WAIT FOR THE TRIENNIAL REVIEW TO DECIDE THIS ISSUE, WE SHOULD REFERENCE THAT ARGUMENT HERE TOO]**

Second, in response to SBC Illinois' testimony about managing the routing of cable through SBC Illinois' central office (Bates lines 286-294, 335-353), AT&T claims that its proposed language satisfies SBC Illinois' concerns. AT&T Br. 40. Specifically, AT&T states that its proposal that the cable be installed "via the shortest practical route between SBC-Illinois's and AT&T's equipment" is not meant to ignore considerations of efficiency and safety. *Id.* However, AT&T's language is vague and, more importantly, ignores the FCC's recognition that the ILEC has the right to decide how its central office is configured (*see* SBC Br. 45), a principle that AT&T accepted when it agreed in Collocation Section 12.3.5.2 that SBC Illinois was entitled to determine the path that AT&T's cables took when brought from its condominium space to its collocation area within SBC Illinois' central office. AT&T should be held to the same agreement here.

Third, AT&T takes issue with SBC Illinois' statement that agreed language in section 3.8.4.1 provides precisely what AT&T wants. AT&T Br. 41. Yet AT&T does not explain why that language is not satisfactory; it only "notes" that section 3.8.4.1 addresses "joint meets." *Id.* If that fact represents some sort of deficiency, AT&T does not explain what that deficiency is. Nor did AT&T cross-examine Mr. Mindell on this point.

AT&T insists that it wants to interconnect and/or access UNEs without collocation (AT&T Br. 189), but that is precisely what section 3.8.4.1 allows. *See* SBC Br. 43-44, 46; see also Mindell lines 71-90; Niziolek lines 309-324. At the same time, AT&T argues, inconsistently, that it wants "its equipment located in [its] condominium space . . . treated as collocated equipment in all respects." AT&T Br. 187, 190. It is well settled that collocation occurs only on the premises of the ILEC; AT&T's condominium space is, by definition, not SBC Illinois' premises. Order, ICC Docket No. 99-0511, March 27, 2002, at 38 (holding that off-site

collocation is not consistent with the 1996 Act or the FCC's orders). AT&T's proposal for a new form of collocation should be rejected.

With respect to its proposed language for Collocation section 12.3.5.7, AT&T claims that this language was previously arbitrated and that AT&T has made "only one change." AT&T Br. 187. That statement is incorrect. In addition to the change that AT&T acknowledges, AT&T also seeks to incorporate by reference new language from Interconnection section 3.3.3. SBC explained in its initial brief why that language is inappropriate. SBC Br. 45-46.

Finally, at no point in its initial brief does AT&T address the testimony of SBC Illinois witnesses Bates and Mindell regarding the feasibility issues of using coaxial cable, which AT&T wants an unfettered right to do. AT&T did not cross-examine either witness on this issue either.

For these reasons, and those set forth in SBC Illinois' initial brief, SBC Illinois' proposed language on these issues should be adopted.

**COLLOCATION:**

**ISSUE 3: Should the ICA terms and conditions allow AT&T to have access between AT&T's collocation space and SBC's distribution frame to verify and test intra-office wiring?**

**Sections 12.3.6-12.3.6.4.4**

**SBC Illinois Testimony: Bates Direct, lines 427-704; Niziolek Direct, lines 1278-1386.**

**SBC Illinois' Initial Brief: pp. 185-190.**

Nearly all points AT&T makes in its initial brief come verbatim from the testimony of its witness on this issue. SBC Illinois addressed Mr. Noorani's testimony in the prefiled testimony of Theresa Bates and Deborah Niziolek, as well as in its initial brief. AT&T makes no attempt to respond to any of SBC Illinois' testimony, nor did it conduct any cross examination of SBC Illinois' witnesses on this issue.

The only point not addressed in SBC Illinois' initial brief is AT&T's assertion that SBC Illinois' vendor approval process is discriminatory. AT&T Br. 191, 192. That assertion is baseless. As AT&T acknowledges, SBC Illinois policy is that approved vendors must be willing to do work for all telecommunications carriers, including SBC Illinois, AT&T and other CLECs. AT&T Br. 192. On its face, this treats all carriers equally. Moreover, such a policy is a reasonable means to limit the number of people with access to SBC Illinois' central office space, thereby reducing the risk of damage to the network and disruption of service to customers of any carrier. Niziolek line 49; Bates line 7.

**LNP:**

**ISSUE 1: Should the ICA contain Hot Cut language over and above that covered in the ICA's OSS Schedule 33.1?**

**Section 13.4**

**SBC Illinois Testimony: Chapman Direct, lines 1504-1600.**

**SBC Illinois' Initial Brief: pp. 191-193.**

AT&T has two objections to SBC Illinois' proposed charge for the time its technicians spend to perform coordinated hot cuts for AT&T.

*First*, AT&T complains that it has not had the opportunity to evaluate the appropriateness of using the labor rates set forth in SBC Illinois' FCC Tariff No. 2. AT&T Br. 200. These rates are unobjectionable, however, because they merely reflect the actual costs SBC Illinois incurs to provide labor. In other words, it is a straight labor rate. Under section 13.2.6 (c) of that tariff the rate for the first half hour or fraction thereof for "testing and maintenance with other telephone companies and other labor" is $23.94 (basic), $26.62 (overtime) and $31.46 (Premium). The rate for each additional half hour or fraction thereof is $22.68 (basic time), $26.62 (overtime) and $31.46 (Premium). There is nothing remarkable or controversial about these labor rates. In fact, these labor rates are virtually identical to the rates set forth in the Illinois Access Tariff at ICC No. 21, Section 13.2.6.[33] These rates are already effective, reviewed rates in the state of Illinois and it would serve no purpose to "evaluate the appropriateness" of those rates, as AT&T contends. AT&T Br. 200.

*Second*, AT&T asserts that SBC Illinois should develop a cost-based nonrecurring charge for this service. AT&T Br. 200-201. AT&T provides no justification for this proposal and fails

[33] The Illinois tariff rate for the first half-hour (basic) is 17 cents less than the rate in the Federal tariff. All other rates are the same. From an administrative perspective, it would be better to have a single rate for the entire five-state SBC Midwest region. However, if the ALJs believe that this difference is significant, SBC Illinois is willing to apply the lower Illinois rate in this state.

to explain why an averaged charge is better than a charge for actual time. What could be more fair than charging CLECs for the actual time they use? AT&T's proposal seems calculated only to delay SBC Illinois' efforts to get fair recovery for the time its technicians spend performing special services requested by CLECs, and is otherwise without merit.

*Third,* it appears that AT&T now agrees to all of SBC Illinois' language for section 13.4.1. AT&T Br. 199. ("AT&T is willing to include language on standalone LNP Orders in Schedule 33.1, the same language that is provided in SBC Illinois' proposed 13-4.1"). The only point of contention for 13.4.1 is whether it belongs in Schedule 33.1 (Operation Support Systems) or Article 13 (Local Number Portability). SBC Illinois believes that Article 13 is the appropriate home for this language because it involves Local Number Portability, not OSS. However – and this is important -- if SBC Illinois cannot recover its costs of providing coordinated hot cuts under this Agreement, then the Commission should most certainly not include the language for section 13.4.1 *at all.* In other words, the Commission should not create an obligation for SBC Illinois without the corresponding right to charge for that service.

**LNP:**

**ISSUE 2: Must SBC Illinois include Enhanced LNP process language in the agreement.**

**Sections 13.5**

**SBC Illinois Testimony: Chapman Direct, lines 1601-1707; Chapman Rebuttal, lines 18-43.**

**SBC Illinois' Initial Brief: pp. 194-195.**

AT&T must now realize that its proposed language for this issue is wrong for the reasons Ms. Chapman explains, i.e., it describes an outmoded California process that has been superseded by a newer one and the enhanced LNP processes in California and Illinois will be different. Chapman Direct lines 1645-1662. AT&T must have come to this realization because it requests the Commission, in the alternative, to direct SBC Illinois to "provide specific language describing the process". AT&T Br. 203. This proposal should be rejected for two reasons. First, the Enhanced LNP process in Illinois has not been fully developed and therefore it is too soon to set out strict contract language describing the process. Chapman Direct lines 1654-1662. Second, AT&T in effect proposes post-arbitration negotiations on LNP Issue 2, in which SBC Illinois proposes language and AT&T considers the language. If this what AT&T envisions, then it should simply agree to SBC Illinois' proposed language because it allows the parties to negotiate and amend the Agreement with the appropriate terms and conditions once the Enhanced LNP process is deployed. Under this approach, AT&T would have the post-arbitration negotiations it now seeks.

Staff, for its part, recognizes that the Enhanced LNP process is not currently provided in Illinois and therefore it proposes no specific language for the Agreement. Staff Br. 73. On this point, Staff and SBC Illinois are in complete agreement. Staff also suggests, however, that AT&T use the bona fide request ("BFR") process to request the Enhanced LNP process once it becomes available. While SBC Illinois does not believe the BFR process is necessary in this

situation, it does not object to including BFR language as Staff proposes. However, it should be noted that the use of the BFR process would cause unnecessary work for both AT&T and SBC Illinois. Once the Enhanced LNP process is developed, implemented and rolled out, it will be immediately available to all CLECs. As this will be a standard ordering process, no additional contractual terms or BFR is necessary.

Of course, there is another option. The Commission could reject all proposed language on this topic and simply acknowledge that AT&T, like all other CLECs, will be able to use the Enhanced LNP process once it is made available later this year.

**POLES DUCTS ROW:**

**ISSUE 1: Should SBC Illinois permit AT&T to do its own make ready work?**

**Section 16.3; Appendix to Article 16 – Sections 1.6.17, 1.16.20, and 1.7.12**

**SBC Illinois Testimony: Stanek Direct, lines 13-110.**

**SBC Illinois' Initial Brief: pp. 196-198.**

AT&T makes several critical errors in its Initial Brief. *First*, AT&T fails to distinguish between "make ready work" and the "placement of attachments". It broadly complains that AT&T is prevented from doing either, AT&T Br. 204-205. This is patently false. AT&T is able to place its own attachments in and upon SBC Illinois Structure, and SBC Illinois does not propose to limit AT&T's right to do so in any way. Stanek Direct lines 32-33. The only issue in this proceeding relates to "make ready work".

*Second*, AT&T claims that the "make ready work" issue was resolved in its favor in the First *AT&T-Ameritech Arbitration*, Docket No. 96-AB-003/004 (Cons.), but AT&T misinterprets that Decision. The language quoted by AT&T from page 52 of the Arbitration Decision is as follows:

> If Ameritech and AT&T are unable to agree on a reasonable cost or time frame for the completion of access-related work, Ameritech ***may*** permit AT&T to conduct Field Survey Work and Make Ready Work itself or through its own contractors in circumstances where Ameritech is unable to complete such work in a reasonable time frame. (Emphasis added).

The language quoted by AT&T provides only that Ameritech *may* permit AT&T to perform "make ready work"; it does not grant AT&T the unilateral right to do so, as AT&T argues.

*Third*, AT&T misquotes the holding in *Southern Company v. FCC*, 293 F. 3d. 1338, 1350-51 (11th Cir. 2000). This case nowhere discusses "make ready work". Instead, the dispute in that case only concerns a third party's ability to "perform attachment installation and

maintenance". *Id*. 1350. "Make ready work" was simply not an issue, as AT&T suggests, and the case therefore lends no support to AT&T's position.

*Finally,* (and this is an omission, not an error) AT&T fails to address the only FCC decision that discusses "make ready work", *Cavalier Telephone v. Virginia Electric Power*. In that case, the Bureau held that CLECs *do not* have the right to perform "make ready work" through their own employees or their own contractors. Although the case was vacated pursuant to a voluntary settlement, AT&T does not -- and cannot -- challenge the logic which led the FCC to find in favor of SBC Illinois on this issue, because the vacatur order specifically states that the decision to vacate does not reflect any disagreement or reconsideration of its finding on this issue. SBC Br. 197.

**INTERCARRIER COMPENSATION:**
**ISSUE 1: Should the terms of this article apply to traffic where AT&T is using ULS-ST provided by SBC Illinois?**

**Section 21.1.1**

**SBC Illinois Testimony: Pellerin Direct, lines 52-139; Pellerin Rebuttal, lines 16-48.**

**SBC Illinois' Initial Brief: pp. 199-201.**

As Staff recommends, the reciprocal compensation rate that applies when AT&T is using ULS-ST must be the same as the reciprocal compensation rate that applies when AT&T is not using ULS-ST. There is no evidence that suggests that SBC Illinois' transport and termination *costs* vary in the slightest – and therefore no reason that transport and termination *rates* should vary – depending on whether or not AT&T is using ULS-ST. SBC Br. 199-200. Staff agrees. Staff Br. 73 ("AT&T has provided no evidence that demonstrates that SBC's costs of terminating traffic should be different or are different when AT&T uses ULS-ST versus when AT&T does not use ULS-ST. . . . Therefore, there is no evidence to indicate that SBC's charges for transport and termination should vary according to whether or not AT&T uses ULS-ST to originate traffic").[34] Staff witness Zolnierek said the same thing in his pre-filed testimony (at lines 1256-1264), and AT&T's witness did not address that testimony on rebuttal, as Staff points out (Staff Br. 73). Even in its brief, AT&T does not try to refute this core proposition. AT&T's long discussion of Intercarrier Compensation Issue 1 (AT&T Br. 207-213) does not even contend (let alone try to show) that SBC Illinois' transport and termination costs do vary or should vary depending on whether AT&T is or is not using ULS-ST.

Instead, AT&T relies on a convoluted trick to try to persuade the Commission to order SBC Illinois to charge AT&T a superseded reciprocal compensation rate that once appeared in SBC Illinois' tariff but no longer does. The central premise of the trick is that SBC Illinois'

[34] Staff briefed together this issue, UNE Issues 27 and 29, and Pricing Issue 4. *See* Staff Br. 70-71.

removal of that rate from its tariff was improper. That premise fails for two reasons. First, SBC Illinois' removal of the rate was not improper. The Commission directed SBC Illinois to do it. SBC Br. 200-201. Staff agrees that the Commission required SBC Illinois to remove the rate (Staff Br.72), and Staff is notably vigilant in matters of this sort. Second, even if AT&T were correct and Staff incorrect, AT&T's proposal would still be improper. The current tariff – which does not include the rate AT&T wants and which explicitly states that "when the Company terminates a call to a Company subscriber that was originated using ULS-ST, the Company is entitled to charge a rate equal to the Commission approved reciprocal compensation rate for the termination" – is the current tariff, and arbitration is not the forum for challenging it.[35]

[35] AT&T's shameful discussion of SBC's FCC compliance filing (AT&T Br. 208 n.67) show how far AT&T is willing to stretch on this issue. The episode AT&T discusses has nothing whatsoever to do with this issue.

**INTERCARRIER COMPENSATION:**

**ISSUE 2.a: Can the terminating Party charge exchange access to the originating Party for traffic within the originating Party's local calling area?**

**Sections 2.1.2.7 and 21.2.8**

**SBC Illinois Testimony: Pellerin Direct, lines 140-764; Pellerin Rebuttal, lines 49-103.**

**SBC Illinois' Initial Brief: pp. 202-205.**

AT&T's request that the Commission overrule the precedents it established on this issue just last year (*see* SBC Br. 203-204) should be rejected for the reasons set forth in SBC Illinois' and Staff's initial briefs. AT&T's discourse on the *ISP Remand Order* (AT&T Br. 214-216) is irrelevant, for a very simple reason: It utterly fails to explain why the originating carrier's local calling areas rather than SBC Illinois' local calling areas should be used to determine reciprocal compensation boundaries, which is what this issue is about. Even if, as AT&T posits, "traffic originating on AT&T's network that both originates and terminates within an AT&T local calling area falls outside the Section 251(g) carve out" (AT&T Br. 216) (and SBC Illinois does not concede that that is correct), that would come nowhere near to justifying AT&T's proposed resolution of this issue, under which calls within an AT&T local calling area would be subject to reciprocal compensation if they originated with AT&T, but not if they originated with SBC Illinois. It is that, first and foremost, that makes AT&T's proposal unworkable, as this Commission has found. *See* Staff Br. 76-77.

Assuming the Commission is not going to seriously consider revolutionizing its established intercarrier compensation regime in this two-carrier arbitration, which it should not, the only real disagreement on Issue 2.a concerns a subsidiary question raised by Staff. The question is complicated (particularly in its history), so we must discuss it at some length before offering, at the end of our discussion, a modified proposal that we believe meets Staff's most recently expressed concern.

Step One: Staff's Initial Concern and Recommendation:

In its testimony on this issue, Staff recommended that the Commission adopt SBC Illinois' proposed language (Zolnierek lines 1354-1357), but with "one modification of SBC's proposal." *Id*. line 1360. As Dr. Zolnierek testified,

> With respect to joint ILEC local calling areas, I recommend the Commission reject SBC's position. If an ILEC local calling area approved by the Commission encompasses the exchanges of two or more ILECs then this local calling area should be preserved for reciprocal compensation purposes. If such a local calling area is not preserved for reciprocal compensation purposes then the parties will be creating varying local calling areas for reciprocal compensation purposes depending on who the interconnecting carriers are . . . ; thus creating just the type of confusion that makes AT&T's plan unworkable.

Zolnierek lines 1360-1368.

To address that concern, Staff proposed to modify SBC Illinois' proposed language for Intercarrier Compensation section 21.2.7. The result, with Staff's proposed modifications shown in redline form over the language SBC Illinois was proposing, is this:

> 21.2.7 "Local Calls," for purposes of intercarrier compensation, is traffic where all calls originate and terminate ~~are~~ within the same common local and common mandatory local calling area, i.e., within the same or different ~~SBC-~~Illinois ILEC Exchange(s) that participate in the same common local or common mandatory local calling area approved by the Illinois Commission. ~~Local Calls must actually originate and actually terminate to End Users physically located within the same common local or common mandatory local calling area within operating areas where SBC-Illinois is the ILEC.~~ The Parties agree that, notwithstanding the classification of traffic under this Article, either Party is free to define its own "local" calling area(s) for purposes of its provision of telecommunications services to its end users but as for reciprocal compensation purposes the local calling area is determined by state commission.

Step Two: SBC Illinois Response to Staff's Concern and Recommendation:

SBC Illinois, while not challenging the legitimacy of Staff's concern, was troubled by Staff's proposal to delete the sentence in 21.2.7 that says "Local Calls must actually originate and actually terminate to End Users physically located within the same common local or common mandatory local calling area . . . ." *See* Pellerin Rebuttal lines 63-69. That sentence

must be retained in section 21.2.7 for reasons that are not the subject of this issue, but that instead are the subject of Intercarrier Compensation Issue 2.c. That is, the sentence makes clear that it is the physical location of the end users, and not their phone numbers, that determines whether a call is or is not subject to reciprocal compensation, a proposition with which Staff wholeheartedly agrees. *See* Staff Br. 84-89 (discussing Issue 2.c). Indeed, Staff's recommendation on Issue 2.c is that the Commission "accept SBC's . . . proposed language for Sections 21.2.1, 21.2.7, and 21.2.8" (*id*. at 84), and that includes the sentence that Staff is proposing be removed in connection with Issue 2.a!

Accordingly, SBC Illinois made a counter-suggestion to address Staff's concern about joint ILEC local calling areas while retaining the language in section 21.2.7 that is important (and that Staff supports) in connection with Issue 1.c. Specifically, SBC Illinois proposed that section 21.2.7 be modified to read as follows (this time showing SBC Illinois' original proposal with suggested new language underscored and with Staff's proposed modifications not shown):

> 21.2.7 "Local Calls," for purposes of intercarrier compensation <u>under this Article</u>, is traffic where all calls are within the same common local and common mandatory local calling area, i.e., within the same or different SBC-Illinois Exchange(s) that participate in the same common local or common mandatory local calling area approved by the Illinois Commission. Local Calls must actually originate and actually terminate to End Users physically located within the same common local or common mandatory local calling area within operating areas where SBC-Illinois is the ILEC. <u>Traffic exchanged between SBC Illinois and AT&T when AT&T is operating outside of SBC Illinois' service territory is not subject to this Article, but may be compensated under a separate agreement consistent with local calling areas established by the</u> Commission. The Parties agree that, notwithstanding the classification of traffic under this Article, either Party is free to define its own "local" calling area(s) for purposes of its provision of telecommunications services to its end users but as for reciprocal compensation purposes the local calling area is determined by state commission.

The new language addresses Staff's concern, because it makes clear that when AT&T is serving a customer in an adjacent LEC's territory and interconnects with SBC Illinois for the exchange of traffic, that interconnection is not encompassed by this Agreement. Pellerin Rebuttal lines 78-

80. With the inclusion of that language, section 21.2.7 has no effect on joint ILEC local calling areas, which are not within the scope of this Agreement, and thus disposes of Staff's concern.

Step Three: Staff's Response to SBC Illinois' Modified Proposal:

Staff does not dispute that SBC Illinois' modification disposes of Staff's initial concern. Now, however, Staff expresses another concern, namely, that this Agreement *should*, in Staff's opinion and contrary to the testimony of SBC Illinois witness Pellerin, govern the exchange of *all* local traffic in Illinois, including traffic involving an AT&T customer who is in an adjacent LEC's (*i.e.*, Verizon's) territory. Staff Br. 79-80. In light of that new concern, Staff continues to recommend the resolution originally set forth in Staff's testimony (Step 1 above), and thus in effect recommends against SBC Illinois' modified proposal.

Step Four: Resolution of the Issue; Final SBC Illinois Proposal:

SBC Illinois disagrees with Staff's understanding that this interconnection agreement does cover or should cover interconnection between AT&T and SBC Illinois for all local traffic in Illinois. This interconnection agreement exists for one and only one reason: so that AT&T can compete with SBC Illinois in the provision of local exchange service *in SBC Illinois' service territory*. The 1996 Act, pursuant to which this Agreement is being made, imposes no obligation on SBC Illinois to (for example) make UNEs available to AT&T under Section 251(c)(3) of the Act outside the territory that SBC Illinois serves or to provide for interconnection with AT&T pursuant to section 251(c)(2) of the Act outside that territory. Accordingly, compensation for such arrangements must be covered by a separate agreement. Accordingly, the Commission should approve section 21.2.7 in the form SBC Illinois proposed at Step Two.

SBC Illinois recognizes, however, that the Commission may agree with Staff that section 21.2.7 should not indicate that this Agreement does not cover calls that involve an AT&T customer in an adjacent LEC's territory. If so, however, the Commission should not approve

Staff's recommendation, because if it does, it will (by virtue of its deletion of the sentence Staff proposes to delete) do violence to the resolution of Issue 2.c that Staff recommends. Instead, the Commission should approve the following language, which faithfully reflects Staff's view on joint ILEC local calling areas ***and*** the scope of this Agreement, while leaving that important sentence intact:

> 21.2.7 "Local Calls," for purposes of intercarrier compensation, is traffic where all calls originate and terminate within the same common local and common mandatory local calling area, i.e., within the same or different Illinois ILEC Exchange(s) that participate in the same common local or common mandatory local calling area approved by the Illinois Commission. Local Calls must actually originate and actually terminate to End Users physically located within the same common local or common mandatory local calling area ~~within operating areas where SBC-Illinois is the ILEC~~. The Parties agree that, notwithstanding the classification of traffic under this Article, either Party is free to define its own "local" calling area(s) for purposes of its provision of telecommunications services to its end users but as for reciprocal compensation purposes the local calling area is determined by state commission.

This is the language staff has proposed, but with the sentence that is needed in connection with Issue 2.c retained, but modified so as to meet staff's concern.

**INTERCARRIER COMPENSATION:**

**ISSUE 2.b: How should ISP-bound, FX-like traffic be compensated pursuant to the rules established by the FCC in the ISP Remand Order?**

**Section 21.2.7**

**SBC Illinois' Initial Brief: pp. 206-211.**

SBC Illinois' initial brief on this issue, and Staff's brief in support of SBC Illinois' position (at pages 80-84), address all the arguments in AT&T's initial brief that warrant response.

**INTERCARRIER COMPENSATION:**
**ISSUE 2.c: Should Local Calls Be Defined As Calls That Must Originate and Terminate to End Users Physically Located within the same Common or Mandatory Local Calling Area?**

**Sections 21.2.1, 21.2.7, and 21.2.8**

**SBC Illinois' Initial Brief: pp. 212-216.**

AT&T begins accurately by saying, "[I]t is puzzling why this one is even disputed." AT&T Br. 227. It is puzzling indeed, because AT&T is swimming against the tide of at least four Commission decisions on this issue in the last three years, including three decisions since the issuance of the FCC Order that AT&T claims should have changed the Commission's mind. *See* SBC Br.213-215.

AT&T then switches to a strikingly inaccurate assertion: "In Michigan, SBC took the exact opposite position that FX calling is not local." AT&T Br. 227. It is true that SBC Michigan took the position that FX calling is not local, but there is nothing "opposite" about that. It is, and has been for years, SBC Illinois' (and Ameritech Illinois') position in this Commission. More bizarre still is AT&T's assertion that, "Here, SBC takes the directly contrary position, insisting that the Commission has jurisdiction to decide this issue." *Id.* Directly contrary to what, one may ask? There is nothing in AT&T's quote from the Michigan Commission that remotely suggests that Ameritech Michigan suggested the Michigan Commission lacked jurisdiction to decide anything.

Then, AT&T, launching into the rhetoric of high dudgeon, pretends that SBC Illinois is proposing something dramatically new. *E.g.*, AT&T Br. 228 ("SBC proposes that the Commission require that AT&T terminate . . . FX calls for free"); "SBC's latest proposal"; "SBC Illinois has again switched its focus"). One would almost imagine that this Commission had not

already repeatedly rejected AT&T's position. As Staff recognizes, though, it is AT&T, not SBC Illinois, that is proposing something new:

> The Commission has consistently ruled in recent orders that FX or FX-like traffic is subject to bill and keep arrangements. . . . AT&T's proposal to institute reciprocal compensation charges should be rejected."

Staff Br. 84.

AT&T makes much of the fact that the parties' current agreement does not exclude FX traffic from reciprocal compensation. If that is so, it is because AT&T has the oldest interconnection agreement in Illinois: It was entered January 14, 1997, with a since unheard-of five year term, which was subsequently extended. It is unseemly for AT&T to ask the Commission to allow it to continue to enjoy a benefit that it has already enjoyed longer than any other CLEC in the state on the theory that the status quo is best.

Finally, even if the Commission had any inclination to make the change AT&T suggests (which it should not, for the reasons set forth in SBC Illinois' and Staff's briefs), such a sweeping change to the Commission's policies, which would affect every local exchange carrier in the State, should not even be considered in a two-party arbitration.

**INTERCARRIER COMPENSATION:**
**ISSUE 2.d: If the ICC adopts SBC's proposal for FX-like traffic, under Issue 2, are specific recording processes warranted for FX traffic?**

**Section 21.2.7**

**SBC Illinois' Initial Brief: pp. 217-220.**

AT&T's assertion that this issue is moot if the Commission retains the status quo (AT&T Br. 243) is false. The status quo in Illinois is that FX traffic is not subject to reciprocal compensation, and the only way to give effect to that established Commission rule is for each party to track the FX traffic it terminates or for the parties to use a sampling methodology of the sort recommended by AT&T. The Commission should reject AT&T's sampling methodology for the reasons set forth in SBC Illinois' initial brief, at pages 219-220, and in Staff's brief, at pages 91-92. Instead, the Commission should adopt Staff's proposed language (*id*. at 92), which permits the parties to develop a mutually agreeable PFX factor and companion audit and data retention language and thereby to avoid the necessity of tracking FX traffic.

Beyond that, SBC Illinois' initial brief on this issue, and Staff's brief in support of SBC Illinois' position (at pages 90-93), address all the arguments in AT&T's initial brief that warrant response.

SBC Illinois accepts the modification to SBC Illinois' proposed language that Staff proposes at page 90 of its brief. Accordingly, the Commission should resolve this issue as recommended by Staff.

**INTERCARRIER COMPENSATION:**

**ISSUE 2.e:** **If the ICC adopts SBC's proposal for FX-like traffic, under Issue 2, should there be specific audit provisions in Article Compensation for the tracking and exclusion of Foreign Exchange traffic?**

**Section 21.2.7**

**SBC Illinois' Initial Brief: pp. 221-223.**

AT&T's assertion that this issue is moot if the Commission retains the status quo (AT&T Br. 251) is false for the reasons set forth above in connection with Issue 2.d.

SBC Illinois' initial brief on this issue, and Staff's brief in support of SBC Illinois' position (at pages 90-93), address all the arguments in AT&T's initial brief that warrant response.

SBC Illinois accepts the modification to SBC Illinois' proposed language that Staff proposes at page 90 of its brief. Accordingly, the Commission should resolve this issue as recommended by Staff.

**INTERCARRIER COMPENSATION:**

**ISSUE 4: Should Information Access traffic and Exchange Services for such access be defined as traffic exempted from reciprocal compensation?**

**Section 21.2.4**

**SBC Illinois Testimony: Pellerin Direct, lines 765-886.**

**SBC Illinois' Initial Brief: pp. 223-228.**

SBC Illinois' initial brief on this issue addresses all the arguments in AT&T's initial brief that warrant response.

**INTERCARRIER COMPENSATION:**

**ISSUE 7: If the originating party passes CPN on less than 90% of its calls, should those calls passed without CPN be billed as intraLATA switched access or based on a percentage local usage (PLU)?**

**Sections 21.3.4-3.4.2**

**SBC Illinois Testimony: Pellerin Direct, lines 887-1023.**

**SBC Illinois' Initial Brief: pp. 229-232.**

The Commission should resolve this issue in favor of SBC Illinois for the reasons set forth in SBC Illinois' initial brief, and notwithstanding the Virginia arbitration decision by the Wireline Competition Bureau ("WCB") upon which AT&T relies, because:

1. The Virginia decision carries no great weight. As SBC Illinois explained in its initial brief (at 238-239), it is not an FCC decision, but is in effect a state commission arbitration decision that happened to be rendered by a bureau of the FCC. Furthermore, this particular issue does not turn on the interpretation of any FCC Rule or precept – it is simply a question of which party's proposal is more reasonable. Thus, the Virginia decision would not be controlling even if it were an FCC decision.

2. The Virginia decision is based on a faulty premise. The WCB says (at ¶ 190) that it is sympathetic to the incumbent's concerns about unscrupulous carriers stripping CPN off calls they deliver to the incumbent, but declines to adopt the incumbent's proposed solution on the theory that if CPN-stripping occurs, the incumbent can file a complaint with the state commission. That assumes the incumbent will be able to prove that the carrier in question is stripping CPN. In reality, however, it will be virtually impossible for the incumbent to prove that – the only available evidence that the stripping has occurred will be the abnormally high percentage of calls received from that carrier without CPN. That is one reason that SBC Illinois' proposed approach is superior: when the percentage becomes abnormally high, the carrier that is

failing to provide CPN is allowed one month to correct the problem, and an appropriate corrective measure then goes into effect automatically if the problem is not corrected.

3. As the Virginia decision notes (at ¶189 and n.622) "several recent state commission proceedings" resolved this issue in a manner consistent with what SBC Illinois is proposing here. Thus, non-Illinois authorities cut both ways. Given that, and the fact that the Virginia decision is not entitled to special weight, the Commission should decide the issue based on which party's position it finds most reasonable.

That said, SBC Illinois' proposal is the most reasonable, for the reasons set forth in SBC Illniois' initial brief. SBC Illinois needs the language it is proposing in order to avoid losses caused by unscrupulous carriers that will otherwise strip CPN from calls they deliver to SBC Illinois. AT&T's contention that SBC Illinois does not need this protection vis-à-vis AT&T is almost surely correct, but that is also why SBC Illinois' language will never adversely affect AT&T. AT&T passes less than 5% of its calls to SBC Illinois without CPN, and unless that percentage more than doubles – and there is no reason to imagine it will – SBC Illinois' language will serve its intended purpose, to protect against misbehavior by other carriers, and will never have any affect on AT&T.

**INTERCARRIER COMPENSATION:**
**ISSUE 8.b: Should AT&T be entitled to a single rate element which includes the tandem rate element, even though the tandem may not be used?**

**Section 21.4.5**

**SBC Illinois Testimony: Mindell Direct, lines 946-969.**

**SBC Illinois' Initial Brief: pp. 233-240.**

Both AT&T and Staff attribute proposals to SBC Illinois that SBC Illinois is not advocating. *See* AT&T Br. 266 (describing SBC Illinois' position concerning numerical standards AT&T must meet in order to qualify for tandem rate); Staff Br. 93-94 (describing SBC Illinois' proposal that AT&T may charge tandem rate only for traffic that flows through tandem switch). In reality, SBC Illinois' position is simply this: Under FCC rule 711(a)(3), AT&T may be permitted to charge the tandem reciprocal compensation rate if and only if AT&T shows that its switch *actually serves* a geographic area comparable to the area served by an SBC Illinois tandem; it is not sufficient for AT&T to show only that its switch is *capable of serving* such an area. Thus, the question presented is purely legal – the meaning of Rule 711(a)(3).

SBC Illinois' initial brief fully supported SBC Illinois' position on this legal issue and addressed all the pertinent arguments in AT&T's and Staff's initial briefs. If the Commission resolves the legal issue in favor of SBC Illinois, it must then resolve Intercarrier Compensation Issue 8.a in favor of SBC Illinois, because both AT&T and Staff recognize that AT&T proved only the areas its switches are capable of serving, not the areas they in fact are serving. AT&T Br. 270 ("AT&T presented considerable unrebutted evidence showing that its switches in Illinois are *capable of serving* a geographic area comparable to SBC's tandem switches. Because AT&T's switches are *capable of serving* [such areas], the Commission should order SBC Illinois to pay the applicable tandem interconnection rate(s)") (emphasis added); Staff Br. 95 ("AT&T

has presented unrebutted evidence that its switches are *capable of serving* geographic areas comparable to . . . SBC's tandem switches") (emphasis added).

**INTERCARRIER COMPENSATION:**

**ISSUE 9: Shall SBC Illinois be required to make available to AT&T comparable compensation arrangements as those between SBC and other incumbent local exchange carriers and competitive local exchange carriers?**

**SBC Illinois Testimony: Pellerin Direct, lines 1024-1088; Pellerin Rebuttal, lines 104-139.**

**SBC Illinois' Initial Brief: pp. 241-244.**

The core of AT&T's position is that "CLECs are entitled under Section 252(i) of the Telecommunications Act of 1996 to adopt reciprocal compensation arrangements used by SBC with other local exchange carriers, including those where the other carrier is an ILEC." AT&T Br. 274. AT&T claims that Section 252(i) gives it this right because it "provides that local exchange carriers 'shall make available any interconnection, service or network element provided under an agreement'." AT&T Br. 274. That is incorrect, and AT&T knows it. What Section 252(i) provides is that local exchange carriers "shall make available any interconnection, service or network element provided under *an agreement approved under this section*." (Emphasis added.) AT&T, by deleting the italicized language, has buried a key precondition to any adoption under Section 252(i): The agreement from which the requesting carrier seeks to adopt must be one that the State commission has approved under Section 252 of the 1996Act. There is no indication in AT&T's proposed contract language, or in its brief, that the ILEC-to-ILEC agreements whose reciprocal compensation provisions AT&T seeks to adopt have been approved under Section 252.

Furthermore, if AT&T were correct in its assertion that it is entitled to adopt those provisions under Section 252(i), there would be no reason for the Agreement to say so. Rather, AT&T would just exercise its Section 252(i) rights when the time comes. The Agreement says nothing about AT&T's rights under Section 252(i) generally, or about AT&T's rights under Section 252(i) with respect to any other sort of provision, so there is no reason for it to say

anything about AT&T's Section 252(i) rights with respect to reciprocal compensation provisions in ILEC-to-ILEC agreements.

This is not to say that AT&T actually has any such rights. It does not, for the reasons set forth in SBC Illinois' initial brief on this issue, and Staff's brief in support of SBC Illinois' position (at pages 95-97). In particular, both SBC Illinois and Staff have explained why AT&T's attempt to salvage its position with a revised proposal must be rejected. SBC Illinois Br. 242-243; Staff Br. 96-97. The Commission should therefore resolve this issue, as Staff recommends, by rejecting AT&T's proposed language for Intercarrier Compensation section 21.3.7.[36]

[36] AT&T indicates that SBC Illinois' principal argument rests on the *ISP Remand Order*, SBC Illinois' interpretation of which AT&T then challenges. AT&T Br. 275 *et seq.* In reality, the *ISP Remand Order* plays at most a tertiary role – SBC Illinois' discussion of this issue in its initial brief does not even mention the order until the tail end, where it picks up on Staff's observation that AT&T's position is inconsistent with the *ISP Remand Order*. And neither SBC Illinois' witness nor SBC Illinois' initial brief makes the argument that AT&T makes so much of on pages 275-276 of its brief.

**INTERCARRIER COMPENSATION:**

**ISSUE 10.a:** **Should 8YY traffic compensation be determined by the jurisdiction of the traffic?**

**ISSUE 10.b:** **Should the 8YY service provider be required to suppress billing of terminating charges to the originating carrier, and provide a report of the traffic suppressed?**

**Sections 21.9.1 and 21.9.3-21.9.4**

**SBC Illinois Testimony: Pellerin Direct, lines 1089-1227.**

**SBC Illinois' Initial Brief: pp. 245-248.**

SBC Illinois' initial brief on these issues addresses all the arguments in AT&T's initial brief that warrant response.

**INTERCARRIER COMPENSATION:**

**ISSUE 11: Should AT&T be able to charge an Access rate higher than the incumbent without a cost study?**

**Section 21.12.1**

**SBC Illinois Testimony: Pellerin Direct, lines 1228-1372.**

**SBC Illinois' Initial Brief: pp. 249-251.**

The Commission should reject out of hand AT&T's attempt to back out of an arbitration issue that it willingly set forth for arbitration and that must be resolved so that Intercarrier Compensation section 21.12.1 is not in conflict with this Commission's decision in Docket No. 01-0338.

AT&T agreed to include in the parties' interconnection agreement the language shown in plain font in Intercarrier Compensation section 21.12.1:

> 21.12.1 For intrastate intraLATA toll service traffic, compensation for termination of intercompany traffic will be at terminating access rates for Message Telephone Service (MTS) and originating access rates for 800 Service, including the Carrier Common Line (CCL) charge where applicable, as set forth in each Party's Intrastate Access Service Tariff**, but not to exceed the compensation contained in an ILEC's tariff in whose exchange area the End User is located** For interstate intraLATA intercompany service traffic, compensation for termination of intercompany traffic will be at terminating access rates for MTS and originating access rates for 800 Service including the CCL charge, as set forth in each Party's interstate Access Service Tariff., **but not to exceed the compensation contained in an ILEC's tariff in whose exchange area the End User is located. Common transport, (both fixed and variable), as well as tandem switching and end office rates apply only in those cases where a Party's tandem is used to terminate traffic.**

In other words, AT&T affirmatively wants the Agreement to state that the parties will pay access charges "as set forth in each Party's interstate Access Service Tariff." But according to this Commission's decision in the Docket No. 01-0338 (the TDS/Ameritech Illinois arbitration discussed in SBC Br. at 249-250), the Agreement cannot say that without adding the qualification that the access rates AT&T charges SBC Illinois shall not exceed the access rates SBC Illinois charges AT&T. AT&T, having agreed that the Agreement should speak to access

rates by saying that each party will charge its tariffed rates, cannot draw the line there and contend that the sentence cannot be completed to reflect a decision that this Commission has already made.

Furthermore, AT&T petitioned the Commission to decide this issue by including it in the Reciprocal Compensation Issue Matrix that it appended to its petition. If AT&T did not believe the issue was subject to arbitration, it should not have included the issue and asked "that the Commission resolve each of the issues designated herein." Petition at 1.[37]

Once the Commission sets aside AT&T's request that the Commission not decide this issue, the resolution of the issue is easy. The Commission should adhere to its resolution of the same issue in Docket No. 01-0338. AT&T has given the Commission no reason to depart from that precedent.

[37] AT&T might say it had an understanding that it, as the petitioner, was to raise all the issues that either party wanted the Commission to address. That explanation, however, is not adequate to square AT&T's filing of this issue with its position that the issue is not subject to arbitration. If that was AT&T's position, it should have told SBC Illinois that it was not going to set forth the issue for arbitration, and that if SBC Illinois wanted to try to arbitrate it, SBC Illinois would have to raise the issue itself, in its Response to AT&T's petition.

**INTERCARRIER COMPENSATION:**

**ISSUE 12: Should combined traffic on the Feature Group D trunks be jurisdictionally allocated for compensation purposes?**

**Section 21.15.2**

**SBC Illinois Testimony: Pellerin Direct, lines 1373-1695.**

**SBC Illinois' Initial Brief: pp. 252-261.**

AT&T makes much of the fact that other incumbent carriers have agreed to what AT&T is proposing here, and that SBC has as well "in other [unnamed] states." AT&T Br. 287. What other incumbent carriers may have agreed to is irrelevant. The most it establishes is that AT&T's proposal is not impossible, but SBC Illinois has not argued it is impossible. Beyond that, what other carriers may have agreed to in other jurisdictions under unknown circumstances and in exchange for who knows what should not affect the Commission's resolution of this issue.

Much the same applies to what SBC has agreed to in other states. In addition, SBC's willingness to accept something in other states in exchange for 271 authorization is no indicator of what SBC Illinois can properly be required to do. Pellerin lines 1622-1629. Furthermore, SBC's experience with AT&T's approach in other states is one of the reasons for SBC Illinois' unwilling to volunteer for the same problems in Illinois. *Id.* lines 1632-1633.

AT&T's attempts to tie its request to the FCC's *Local Competition Order* (AT&T Br. 288) are notably lame. This issue has nothing to do with the point(s) at which AT&T will interconnect its network with SBC Illinois', or with the method by which the two networks will interconnect, or with any modification to SBC Illinois' network. If it did, AT&T's testimony would have explained the connection when it recited the FCC precepts that AT&T relies on, which it did not (*see* Finney/Schell-Talbott line 3812 *et seq*.), and AT&T's initial brief would have done the same, which it does not. Furthermore, if the *Local Competition Order* entitled

AT&T to what it is asking for, this Commission would not have repeatedly resolved the issue in SBC Illinois' favor after the *Local Competition Order* was issued. *See* SBC Br. 252-253.

Beyond that, SBC Illinois' initial brief on this issue addresses all the arguments in AT&T's initial brief that warrant response.

**COMPREHENSIVE BILLING:**

**ISSUE 1: Should CABS billing be used when the OBF has established guidelines for its use?**

**Sections 27.1.3 and 27.4.4.2**

**SBC Illinois Testimony: Smith Direct, lines 45-148; Smith Rebuttal, lines 8-52.**

**SBC Illinois' Initial Brief: pp. 262-265.**

AT&T's initial brief on this issue misrepresents the record, because it attributes to Staff's witness assertions that were actually made by AT&T's witness. At pages 5-6 of her Verified Statement, Staff witness Weber paraphrases the testimony of AT&T witness Moore on this issue. She merely paraphrases it; she does not endorse it. In its brief, however, at page 291, AT&T cites Ms. Weber for two propositions that in reality were made by AT&T witness Moore and then paraphrased (without endorsement) by Ms. Weber.[38]

SBC Illinois and Staff have explained at length why AT&T's request that the Commission require SBC Illinois to convert to CABS billing for OS/DA must be rejected (SBC Br. 262-262-265; Staff Br. 97-102), and there is no need to repeat that demonstration here. AT&T pretends to deal with Staff's objections to its proposal (AT&T Br. 293), but ducks Staff's (and SBC Illinois') principal objection: AT&T's proposal is "potentially cost prohibitive" (Staff Br. 97), and does not take into consideration any evaluation of "the cost and effort to develop the functionality within CABs." *Id*. 99. Even if AT&T is incurring some "unnecessary expenses" under the current system, as it claims (AT&T Br. 291), AT&T's proposal cannot be considered without balancing that expense against the cost of the change AT&T proposes. The closest AT&T comes to discussing this critically important point – and again, AT&T does not come

[38] The most egregious of these misattributions is for the proposition that "validation of SBC's OS/DA bills from its RBS can only be accomplished on a manual basis . . . ," which AT&T attributes *solely* to Ms. Weber. In the other instances, AT&T cites both to Ms. Moore and Ms. Weber, even though it was only Ms. Moore that made the assertion.

very close, because it makes no mention of the cost to SBC Illinois – is to say that "there is no reason for AT&T to be required to provide a specific quantification of the benefits to it of receiving OS/DA bills in CABS format." AT&T Br. 293. That is downright silly. If the conversion would save AT&T $500/month and would cost SBC Illinois $3,000,000 to implement, the Commission would not require it.

And, as SBC Illinois and Staff have also emphasized, there is no legal basis for AT&T's request in any event, because OBF guidelines are not binding. SBC Br. 263; Weber lines 50-52.

**COMPREHENSIVE BILLING:**

**ISSUE 2: Should the Billed Party have the discretion to designate a changed billing address for different categories of bills upon 30 days written notice to the Billing Party?**

**Section 27.2.1.3**

**SBC Illinois Testimony: Smith Direct, lines 149-266.**

**SBC Illinois' Initial Brief: pp. 266-267.**

AT&T touts its request as "simple." AT&T Br. 295. That is ironic, because the central flaw in AT&T's reasoning is that it is *too* simple. AT&T's reasoning is this:

1. It would be a good thing for AT&T if the Commission were to order SBC Illinois to send different categories of bills to different addresses; therefore,

2. The Commission should order SBC Illinois to send different categories of bills to different addresses.

The missing step, of course, is a comparison of how much money (if any) AT&T would save versus how much money SBC Illinois would have to spend if the Commission granted AT&T's request. There is no basis in law for AT&T's request, and AT&T does not claim otherwise. That being so, the only possible basis for a Commission resolution of this issue in favor of AT&T would be a determination that it makes economic sense. AT&T, while quarreling with the statement of SBC Illinois witness that SBC Illinois would have to develop an entirely new billing system (AT&T Br. 295), admits that SBC Illinois would have to "modify its billing systems so as to be able to send bills for different services to different AT&T addresses" (*id*. at 295-96). How much these modifications might cost, however, is a matter of explicit indifference to AT&T, and AT&T even goes so far as to assert, as it did on Comprehensive Billing Issue 1: "Nor should a 'quantification' of the impact on AT&T be needed to justify this straightforward request." AT&T Br. 296. That is dead wrong, because it is only if that amount exceeds the cost that that AT&T's proposal even might make sense.

Beyond that, SBC Illinois' initial brief on this issue, and Staff's brief in support of SBC Illinois' position (at pages 102-104), fully address all the arguments in AT&T's initial brief that warrant response.

**COMPREHENSIVE BILLING:**

**ISSUE 3: Must SBC provide the OCN of an originating carrier to AT&T operating as a facilities based carrier, when the originating carrier is utilizing SBC's switch on an unbundled basis?**

**Section 27.10.2**

**SBC Illinois Testimony: Read Direct, lines 141-251.**

**SBC Illinois' Initial Brief: pp. 268-270.**

This is a simple issue that AT&T has obfuscated by pretending it turns on considerations – access to LIDB in particular – that are actually beside the point.

In order to bill reciprocal compensation to third party carriers that originate traffic that transits SBC Illinois' network and is then handed off to AT&T for termination by AT&T's switch, AT&T needs to know who those carriers are. So, SBC Illinois has agreed to give AT&T a report that identifies who those carriers are. The report will accomplish do this by giving each originating carrier's ACNA (Access Customer Name Abbreviation), an identier that AT&T acknowledges uniquely identifies the carrier to which it is assigned. SBC Br. 269.

There is not one word in AT&T's testimony about why AT&T's needs are not perfectly met by the ACNA identifiers in the reports SBC Illinois will be providing. *See* Moore lines 310-376. Instead, AT&T's witness focused on why LIDB – an alternative source of information that SBC Illinois had mentioned but has not relied on in its briefing of this issue – is not a workable solution. Thus, the undisputed evidence shows that SBC Illinois would be giving AT&T exactly what it needs – identification of the originating carriers by means of their ACNAs – and thus that AT&T's request that the Commission require SBC Illinois to give AT&T a second identifier, OCN, should be denied.

In its brief, however, AT&T asserts – for the first time – that the reports with ACNA identifiers are not adequate, because they will show only total terminating minutes of use for

each originating carrier, and will not provide individual call detail. AT&T Br. 299. AT&T's newly minted theory fails, for three reasons:

*First*, it is absolutely unclear from the evidence whether of not the reports will include call detail. For the proposition that they will not, AT&T cites to the hearing testimony of SBC Illinois witness Read (*id.*), but a review of Mr. Read's testimony (Tr. 190-191) reveals that Mr. Read did not know one way or the other whether the reports would contain call detail. *E.g*:

> Q: Isn't it correct that the report is going to – what the report is going to provide is total minues of use from each originating carrier?
>
> A: I'd be speculating. I really don't know.

It is AT&T that is contending (though only now) that the reports with ACNAs are inadequate, and it is therefore AT&T's burden to prove that they are. Mr. Read's uncertain testimony on this point is insufficient to carry AT&T's burden.

*Second*, there is no evidence in any event that AT&T needs call detail rather than total terminating minutes. AT&T says *in its brief* that "[b]ecause this report only provides terminating minutes of use by ACNA and not individual call detail, *AT&T believes that it is insufficient* to support AT&T's billings to the originating carrier" (AT&T Br. 299). But a statement in a brief is not evidence. AT&T's witness on this issue certainly did not say that AT&T needs call detail rather than total terminating minutes (*see* Moore lines 310-376), and in the absence of any evidence to that effect, the Commission cannot properly conclude that the reports are inadequate because they may not (or may, for all the evidence shows) include call detail.

*Third*, and most important, giving AT&T the language it is proposing would not solve the call detail problem (if it is a problem) anyway. Recall that the disputed language at issue here is the bolded language in the following provision:

> Where AT&T, as a facilities based provider, is using terminating recordings produced within its network to bill reciprocal compensation, SBC-Illinois will provide a report to identify the UNE originating traffic, **including the OCN of the originating third party carrier**, and AT&T will bill the originating UNE Carrier for MOUs terminated on the AT&T network . . .

All AT&T's language would do is give AT&T the OCN instead of (or in addition to) the ACNA that is already in the report. If the report does not include call detail, it still will not include call detail, even with AT&T's language.

Accordingly, and for the reasons set forth in SBC Illinois initial brief, the Commission should resolve Comprehensive Billing Issue 3 in favor of SBC Illinois.

**COMPREHENSIVE BILLING:**

**ISSUE 4.a: Should SBC Illinois be required to provide to AT&T the OCN of 3rd party originating carriers when AT&T is terminating calls as an unbundled switch user of SBC Illinois?**

**Section 27.14.4; Schedule 9.2.7, Section 27.14.4**

**SBC Illinois Testimony: Read Direct, lines 252-331.**

**SBC Illinois' Initial Brief: pp. 271-274.**

Because AT&T has modified its original proposal for section 27.14.4, we begin by quoting the competing language. SBC Illinois proposes the following, with the language AT&T opposes in bold:

> 27.14.4 SBC-Illinois will include the OCN of the originating carrier in the usage records it provides for calls originated by 3rd party carriers **utilizing an SBC ULS Port that terminate to an AT&T ULS Port, where technically feasible. SBC-Illinois will begin providing this OCN after SBC-Illinois completes its ULS Port OCN project, which project is targeted for completion during 1Q2004.**

AT&T proposes the following, with the language SBC Illinois opposes in bold and underlined (AT&T Br. 303):

> 27.14.4 SBC-Illinois will include the OCN of the originating carrier in the usage records it provides for calls originated by 3rd party carriers, **with an effective date targeted for the 1st quarter 2004**.[39]

The differences, and the reasons they should be resolved in favor of SBC Illinois, are as follows:

1. SBC Illinois' language includes a technical feasibility requirement, while AT&T's language does not. AT&T has articulated no objection to that limitation, and cannot reasonably have one. The limitation is reasonable not only generally (because SBC Illinois should not be required to do the technically infeasible), but also in this particular context,

[39] AT&T's language goes on to provide that records received without OCN will be treated as though originated by SBC Illinois, but that is the subject of Issue 4.b, below.

because some older switches do not provide the information SBC Illinois needs in order to provide OCNs. Tr. 197-198.

2. SBC Illinois' language states that SBC Illinois will begin providing OCN "after SBC-Illinois completes its ULS Port OCN project, which project is targeted for completion during 1Q2004." AT&T's language states that SBC Illinois' duty to include OCN will have "an effective date targeted for the 1st quarter 2004." AT&T has not explained what it is trying to accomplish with its tweaking of SBC Illinois' language, and there is obviously not much of a difference between saying that SBC Illinois' duty will have an effective date targeted for the 1st quarter 2004 and saying that SBC Illinois duty will commence when it completes its project, which is targeted for completion during 1Q2004.[40] SBC Illinois' language should be used, however, because it appropriately ties the start date explicitly to the completion of the project that must be completed before SBC Illinois can provide the OCNs.

3. SBC Illinois' language limits SBC Illinois' duty to provide OCNs to calls that are (a) originated by third party carriers using SBC unbundled local switching and (b) terminated to an AT&T unbundled local switch port. AT&T's language, on the other hand, would require SBC Illinois to provide OCNs for all calls originated by third party carriers. There are two differences here:

a. <u>The limitation to calls originated by third party carriers using SBC unbundled local switching</u>. SBC Illinois witness Read testified in no uncertain terms that that limitation must be included, because AT&T's request is "more than the network can provide. . . . The OCN is not in the picture from the switch." Read lines 295-297. *See also id.* lines 328-331 ("SBC Illinois' obligation to provide OCN applies only where the third party originating carrier

[40] AT&T does express some concern about the imprecision of "targeting" the first quarter of 2004 (AT&T Br. 302), but AT&T's proposed tweaking of SBC Illinois language does not add any precision.

is utilizing an SBC ULS Port . . . . That limitation is plainly reasonable, because UNE-P identification is a capability and part of the switch recording. Other third party traffic . . . is not.") In other words, it simply is not possible for the usage records that SBC Illinois provides AT&T to include the OCNs of originating carriers that do not use an SBC Illinois switch.

AT&T cross-examined Mr. Read about Comprehensive Billing Issue 4.a at hearing, but did not challenge his testimony on this point. *See* Tr. 192 *et seq*. Now, in its brief, AT&T's only answer to Mr. Read's testimony is to assert that "it is difficult to see why SBC cannot provide this information." That hardly qualifies as rebuttal. The record evidence is undisputed: SBC Illinois can and will provide OCNs of originating carriers that are leasing unbundled local switching from SBC Illinois, but SBC Illinois cannot, and therefore cannot reasonably be required to, provide OCNs of originating carriers that are not leasing unbundled local switching from SBC Illinois.

b. <u>The limitation to calls terminated to AT&T as a purchaser of SBC unbundled local switching</u>. SBC Illinois' language includes this limitation and AT&T's does not, but it appears that AT&T does not actually object to the limitation. In its brief, AT&T recognizes (at 301) that Issue Comprehensive Billing 4.a "relates to situations in which AT&T is using unbundled local switching leased from SBC (rather than AT&T's own switching facilities." That recognition, which is mirrored in the agreed statement of the issue (". . . when AT&T is terminating calls as an unbundled switch user of SBC Illinois"), strongly suggests that calls terminated to AT&T when AT&T is not using ULS are not on the table. Also, AT&T's brief does not take issue with this limitation, which, in any event, the undisputed evidence (*e.g.* Tr. ___) shows is necessary and appropriate, because SBC Illinois does not make a terminating recording when AT&T is using its own switch; AT&T makes its own terminating records in that situation.

Accordingly, and for the reasons set forth in SBC Illinois' initial brief, the Commission should resolve this issue in favor of SBC Illinois.

**COMPREHENSIVE BILLING:**

**ISSUE 4.b: Should SBC Illinois be billed on a default basis when it fails to provide the 3rd party originating carrier OCN to AT&T when AT&T is terminating calls as the unbundled switch user?**

**Section 27.14.4; Schedule 9.2.7, Section 27.14.4**

**SBC Illinois Testimony: Pellerin Direct, lines 1998-2054.**

**SBC Illinois' Initial Brief: pp. 275-278.**

To whatever extent SBC Illinois will have an obligation to give AT&T the OCNs of originating carriers as a result of the Commission's resolution of the Issue 4.a, AT&T's request that the Commission allow AT&T to bill SBC Illinois for the affected traffic if SBC Illinois breaches that obligation must be rejected. As SBC Illinois explained in its initial, brief, AT&T's proposal cannot be justified as a penalty, or as liquidated damages, or as an assessment of reciprocal compensation.

For its part, AT&T offers no legal justification for its proposal in its initial brief. In fact, AT&T offers no explanation whatsoever for its proposal in connection with Comprehensive Billing Issue 4.b. AT&T does offer an explanation in connection with Comprehensive Billing Issue 3 (*see* AT&T Br. 300), but that explanation is misplaced, because AT&T's proposal for that issue says nothing about AT&T billing SBC Illinois. In any event, AT&T's explanation, in addition to being linked to the wrong issue, fails. AT&T asserts that its proposal is reasonable because "since SBC knows the identity of the originating carrier that is using its unbundled switching, SBC can then bill that carrier and be made whole." AT&T Br. 300. That is wrong. SBC Illinois *cannot* bill the originating carrier. If SBC Illinois tried to, the originating carrier would refuse to pay, on the absolutely correct ground that it has no obligation to pay SBC Illinois the terminating charges. The originating carrier's obligation runs to AT&T, not SBC Illinois,

and that does not change – least of all from the point of view of the originating carrier – just because SBC Illinois doesn't give AT&T the originating carrier's OCN.[41]

[41] AT&T's premise that "SBC knows the identity of the originating carrier" (AT&T Br. 300) is also wrong, but we do not debate that point, because AT&T's proposal so clearly fails on other grounds.

**OSS:**

**ISSUE 2: Should AT&T be required to specify features or functionalities on UNE-P migration orders or should AT&T be able to indicate 'as is' on UNE-P migration orders through a standard indicator on the orders.**

**Section 33.5.14**

**SBC Illinois Testimony: McNiel Direct, lines 41-362; McNiel Rebuttal, lines 13-151.**

**SBC Illinois' Initial Brief: pp. 279-285.**

AT&T has dropped its claim that "as is" ordering is required by the Illinois Public Utilities Act, section 13-801. AT&T Br. 308, n. 136. It therefore has no legal basis to its claim that SBC Illinois develop an "as is" ordering process for its use and its position should be rejected.

Despite the lack of any legal basis for its claim, AT&T presses forward. AT&T bemoans the customer "interrogation" process it must allegedly conduct, AT&T Br. 306, but this red herring. AT&T ignores the fact that it has ready access to SBC Illinois' official customer service record (called the "CSR") for each potential end user it talks to. McNiel Direct lines 300-334. AT&T has instant, electronic access to these CSRs and therefore is able to accurately place "as specified" orders without relying on the end user at all.

AT&T argues that the current ordering process impairs its ability to compete, AT&T Br. 306, but the record evidence suggests otherwise. Mr. McNiel explained that SBC Illinois is providing over 750,000 UNE-P lines as of April 2003, so AT&T is having great success as a competitor in the local market. McNiel Direct lines 83-86. The Commission's own Annual Report on Telecommunications Markets in Illinois, dated May 28, 2003 shows that the CLEC market share in the Chicago LATA as of December 31, 2002 was over 23% -- an increase of almost 5 points from December 31, 2001 when the number was 18.7%. By all objective measures, then, local competition in Illinois is thriving.

AT&T's allegation on competitive impact is also flatly inconsistent with this Commission's findings in the 271 investigation (Docket No. 01-0662). There, the Commission undertook an exhaustive review of the competitive conditions in Illinois and concluded that SBC Illinois satisfied all the market-opening conditions set forth under federal law, including a comprehensive "public interest" review. The Commission specifically focused on the "as is" issue and rejected AT&T's claim that its version of "as is" ordering was required to meet the public interest standard under § 271. Order on Investigation, Docket 01-0662, ¶ 3183.

AT&T tries mightily to distinguish this decision, but fails. First, AT&T argues that the Commission was under the misapprehension that the "as is" process was a *new* ordering process. AT&T Br. 307. AT&T is just playing word games. The point the Commission was making is that the "as is" process is something *different* than the ordering process currently deployed by SBC Illinois and that the Commission was therefore not going to require SBC Illinois to change its OSS systems to deploy it. AT&T's second point also leads nowhere. It argues that the 271 proceeding was not intended to entertain "novel issues". AT&T Br. 307-308. While this is true, the Commission did not need to entertain any novel issue to dispose of AT&T's request. The 271 proceeding fully addressed whether the "as is" process is required under federal law (*Id.* ¶¶ 763-765) or state law (*Id.* ¶¶ 3177-3186) – and held that there is no obligation under either. Given that broad holding, it is difficult to ascertain the legal basis upon which AT&T believes it is entitled to relief in this proceeding.

Staff has this issue right when it says that it would be unreasonable for the Commission to require SBC Illinois to pay for OSS modifications just so that AT&T can simplify its own ordering process. Staff Br. 103. While SBC Illinois does not agree with Staff that the BFR process is appropriate in this case, we do agree with Staff that the Agreement should not simply give AT&T the right to demand "as is" ordering.

**PRICING:**

**ISSUE 1: Should AT&T's rates for SBC's use of Space License apply on a per trunk group or per switch basis?**

**Pricing Schedule Lines 781-782**

**SBC Illinois Testimony: Mindell Rebuttal, line 331-445; Silver Direct, lines 56-221; Silver Rebuttal, lines 13-116.**

**SBC Illinois' Initial Brief: pp. 286-290.**

AT&T raises four arguments in support of its position, none of them convincing. AT&T's lead argument is that the "per trunk group" limitation applies in the four other SBC Midwest states, so it should apply in Illinois, too. AT&T Br. 311. SBC Illinois responds that it did not catch the subtle change made by AT&T and is now disputing the excess charges in those states. AT&T finds it hard to believe that SBC Illinois missed the insertion of the three words ("per trunk group") into the price schedule, AT&T Br. 311-312, but the ALJs need only look at the small print and the cramped language on page 12 of the price schedule to appreciate how easy it would be to miss such a change. In any event, the simple fact is that SBC Illinois hotly disputes this issue in Illinois, and what happened in other SBC Midwest states is irrelevant.

Second, AT&T continues to claim its former access tariff justifies the "per trunk group" charge to SBC Illinois. AT&T Br. 312. AT&T never explains, however, where in its access tariff the "per trunk group" limitation shows up. *There is no such limitation in AT&T's tariff,* and it is a wonder that AT&T continues to use the tariff in support of its position here. Silver Rebuttal lines 33-59.

Third, AT&T defends its proposal by noting that SBC Illinois could take advantage of the lowest price available in the pricing schedule by terminating "only" seven (7) DS3s in a trunk group. AT&T Br. 313. This translates into one hundred ninety six (196) DS1s, so there are several problems with AT&T's argument. Number one, it is impossible to place more than eighty one (81) DS1s in a trunk group served by a Lucent switch, so it is technically impossible

to do what AT&T suggests when using a Lucent switch. Mindell Rebuttal lines 402-407. Number two, Mr. Silver analyzed one of the busiest AT&T offices in downtown Chicago and demonstrated that, while there are hundred and hundreds of SBC Illinois DS1s terminating to that AT&T location, only one trunk group contained more than twenty eight (28) DS1s, Silver Direct, Sch. MDS-3, and that trunk group contained less than fifty-six (56) DS1s. *Id.* Thus, even at the busiest of AT&T central offices there is no possibility that SBC Illinois would terminate one hundred and ninety six (196) DS1s on a single trunk group. Number three, it is not true that 196 DS1s gets SBC Illinois "the lowest price available in the ICA Pricing Schedule", as AT&T contends. AT&T Br. 312. The lowest non-recurring rates do not kick in until volumes exceed 1000 DS1s.

Fourth, AT&T apparently recognizes the weakness of its position and has now raised a new argument for the first time on brief. It argues that the rates in the pricing schedule are premised on its "per trunk group" limitation and that if the limitation does not apply, it will have to recalculate those rates. AT&T Br. 313. This argument is specious. The current interconnection agreement between SBC Illinois and AT&T contains space license rates that apply on *a per DS1 basis* at *exactly the rates shown in the pricing schedule* to the Agreement. Silver Direct lines 125-127. If these rates are no good without a "per trunk group" limitation, one might ask, why have they been in use between the parties since 1997 without one? And why are these same DS1 rates reflected in AT&T's access tariff, which *does not* include any "per trunk group' limitation? Equally important, the volume discount schedule can only be meaningful if it applies on a per DS1 basis. No carrier could ever get a sufficient volume of DS1s within any single trunk group to make the volumes set forth in the schedule make any sense. If AT&T really believed that the volume discount applied only on a "per trunk group" basis, there would simply have been no need to create a price schedule with DS1 volumes up to

1000. The only logical conclusion that one can draw from the large DS1 volumes in the discount schedule is that the discount applies on a per DS1 basis – not "per trunk group".

As for Staff, its reluctance to devote than two lines to this issue in its brief means that its endorsement of AT&T's position is lukewarm, at best. Staff Br. 104.

For all these reasons, SBC Illinois urges the Commission to reject AT&T's position and to apply the volume discount on a per DS1 basis.

**PRICING:**

**ISSUE 4: What is the proper rate for reciprocal compensation associated with ULS-ST?**

**See Pricing Schedule 485-487**

**SBC Illinois Testimony: Pellerin Direct, lines 2124-2133.**

**SBC Illinois' Initial Brief: p. 291.**

This issue is identical to Reciprocal Compensation Issue 1 and should be resolved in the same way. *See* SBC Br. 291; AT&T Br. 314; Staff Br. 70-71.

**PRICING:**

**ISSUE 5.a:** **How should LIDB queries be defined in the pricing schedule.**

**ISSUE 5.b:** **Should prices for unbundled operator services – LIDB validations be included in the pricing schedule?**

**Pricing Schedule, page 9**

**SBC Illinois Testimony: Silver Direct, lines 224-378; Silver Rebuttal, lines 118-213.**

**SBC Illinois' Initial Brief: pp. 292-294.**

AT&T' s position is a curious one. On the one hand, it argues that SBC Illinois' changes to the LIDB tariff should not be incorporated into the Agreement until they have been approved by the Commission, at which point "the resulting pricing and rate design changes may be incorporated into the pricing schedule of the ICA." AT&T Br. 316. On the other hand, AT&T objects to any requirement that changes to the LIDB tariff be incorporated into the Agreement. AT&T Br. 318. Even though the tariff rates for LIDB may change, AT&T argues, it may not be appropriate to make the same changes to the Agreement.

AT&T cannot have it both ways. Either the Agreement must contain the new LIDB rates and rate structure right from the start or the Agreement must – without any qualification – provide that the any tariff changes to LIDB be incorporated into the Agreement. AT&T's equivocation on this point is ample reason for the Commission to adopt SBC Illinois' initial proposal that the LIDB rates and rate structure be incorporated into this Agreement from the start.

## IV. CONCLUSION

For the foregoing reasons, and the additional reasons set forth in SBC Illinois' initial brief, SBC Illinois urges the Commission to resolve the open issues in favor of SBC Illinois and to direct the parties to include in their Agreement the contract language proposed and endorsed by SBC Illinois.

Dated: July 1, 2003

Respectfully submitted,

SBC ILLINOIS

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## CERTIFICATE OF SERVICE

I certify that I caused copies of the foregoing **SBC ILLINOIS' POST-HEARING REPLY BRIEF** to be served on this 1st day of July, 2003, on the following persons by e-mail, to be followed by hard copy, at the following addresses:

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